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GOVERNMENT
OF
GREAT BRITAIN

By

JYOTI PRASAD SUDA, M A,
Head of the Department of Political Science,
MEERUT COLLEGE, MEERUT

author of

Elements of Political Science, India Her Civic Life and Administration, Elementary Civics for High School Classes, Introduction to Philosophy for B A Students
etc

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PREFACE

The thought of supplementing my *Elements of Political Science* with a book dealing with Constitutions usually prescribed for students offering Politics as one of their optional subjects for the B A examination of our Universities, was in my mind for long Originally, I had intended to finish writing about all the constitutions before getting any one of them published separately But as the whole scheme would have taken long to mature, I decided to get this volume dealing with the Government of Great Britain published as soon as it was ready I hope it would be followed by a volume dealing with the Government of the United States of America by the end of the year, or early next year Books containing accounts of the Governments of Russia, Switzerland, France and a few other countries would follow as time and circumstances permit I propose to put them together in one volume at a later stage

In preparing it I have kept in view primarily the requirements of our students, avoiding all details that could be conveniently omitted and discussing at propotionate length all the topics whose knowledge is necessary How far I have been able to achieve success in my objective is for the readers to determine, but I hope that this volume would fully meet the needs of those for whom it is meant

In preparing it I have largely relied upon the works of scholars like Ogg, Munro, Jennings, Laski, Ramsay Muir and Low Obligations have been acknowledged in footnotes A short bibliography for the guidance of the students has been appended over leaf It is hoped that the students would read some at least of the standard works named therein An index also has been added

In the end I have to thank my esteemed friend and colleague Professor Satyavrat Ghosh for the great help he rendered in correcting the proof sheets and also for some valuable suggestions he gave. I am also thankful to the printer, Mr Madan Mohan, for having finished printing the book within a very short time

VIJAY MANDIR,
Civil Liner, Meerut.
February, 1947.

Jyoti Prasad Suda,
Meerut College.

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Ogg : European Governments and Politics.

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More Advanced

Jennings Cabinet Government

Jennings Parliament.

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Finer's *Theory and Practice of Modern Government* and Marriot's *Mechanism of Government* also contain an excellent account of the various British institutions and practices. Lowell's two volumes dealing with the British constitution are also good though they are somewhat out of date

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GOVERNMENT OF GREAT BRITAIN

CHAPTER I

Salient Features of the British Constitution

Introductory —The British system of government is one of the most important and influential systems in the world British political institutions have spread far and wide over the globe They are naturally of great interest to the student of Political Science and have been studied and described by a large number of competent scholars They possess a special significance for us in India our institutions and system of government are largely modelled on them The Government of India Act of 1935 established the parliamentary form of government in the British Indian Provinces, with vital modifications to suit the exigencies of the political situation in the country In their constitution composition powers and functions our legislatures are meant to be a reproduction of the British Parliament to a large extent, again with vital qualifications Even our local self governing institutions have had their inspiration in the British practice The whole system of administration is an import from Great Britain Future developments are also likely to bring our institutions nearer to those of Great Britain We cannot go far in the understanding and appreciation of our political system without a sound knowledge of British institutions

British political institutions have come not only to our country, they have also been adopted by other nations to varying extent We might have had to adopt them because of our political servitude, but the other nations have chosen them because of their value and efficacy Not improperly the British Parliament has been called the 'Mother of Parliaments her progeny has spread into countries as far removed from one another as Canada is from Australia or Sweden from the Union of South Africa It is largely in imitation of the British system that bicameralism has been written into its constitution by almost every civilized country in the world Britain

was the first country to have transformed despotic monarchy into constitutional monarchy through the growth and development of Parliament and the Cabinet system England is the classic home of local self government and the rule of law Several countries have borrowed consciously or unconsciously, their systems of local self government from Great Britain. The contributions of Great Britain to the art of government are thus many and varied * Thus British political institutions deserve study prior to those of any other modern state on the ground of their being most widely influential Very rightly and naturally they have extracted the admiration of writers on constitutions British as well as foreign

Salient features —The British constitution has several important features In the first place, it is the *oldest* of all modern constitutions There is hardly any government in continental Europe antedating 1800, only a few are older than 1870, and the constitutions of quite a number were formed after the First World War Similar remarks may be made about governments in other parts of the world. The present governments of old countries like China and Japan are very modern that of the United States of America is not even two centuries old In itself this very long age of the British constitution does not constitute any great recommendation, it acquires significance because of its organic relation with its second basic feature, namely, its almost unbroken evolution during the last thirteen or fourteen hundred years Nowhere else in the world can the student of constitutions find a political evolution so prolonged and yet relatively so free from violent commotions or definite breaches with the past The only period when her continuous and unbroken development was seriously interrupted was the experiment with the republican form of government tried by Cromwell which did not last for more than a dozen years There is no English revolution comparable to the French Revolution of 1789 or the Russian Revolution of 1917 The geographical isolation of Great Britain from the

* The following extract from Munro *Govts of Europe* brings out the importance of the point stressed in the text This democratization of a large part of the civilized world during the eighteenth and nineteenth centuries largely through the English speaking leadership is one of the most conspicuous facts in the whole realm

Continent and the genius of her people which disposes them to *reforms* rather than to *revolutions* and makes them peculiarly indifferent to the demands of logic or system in the art of government have been primarily responsible for this almost unbroken continuity of British constitutional development It has been described by Professor Freeman in an emphatic and eloquent manner in the following words *The continued national life of the people, notwithstanding* foreign conquests and internal revolutions has remained unbroken for fourteen hundred years At no moment has the tie between the present and the past been wholly rent asunder at no moment have Englishmen sat down to put together a wholly new constitution in obedience to some dazzling theory Each step in our growth has been the natural consequence of some earlier step, each change in our Law and Constitution has been not the *bringing* in of any thing wholly new, but the development of something that was already old *Our progress has in some* ages been faster, in others slower at some moments we have seemed to stand still, or even to go back, but the great march of political development has never wholly stopped, it has never been permanently checked since the days when the coming of the Teutonic conquerors first began to change Britain into England *

The fact that the British constitution is the product of a long and continuous process of development has a fundamental importance From it flow several of its salient features In the first place, it makes the British constitution a growth and not a make, *in the second place, it makes it flexible, thirdly it accounts for its* largely unwritten character, and lastly, it has resulted in the most curious opposition between theory and practice, A few words of explanation are necessary in regard to each one of these features

Although every constitution is a living and growing thing, there is a special sense in which *growth* can be predicated of the British constitution and of the British constitution alone There is great truth in the statement of Sidney Low that while other constitutions have been built, that of Great Britain has been allowed to

* English Constitution page 19

grow and gradually adapt itself to its environment. To whatever extent the constitution of the United States of America might have been adjusted and adapted to the changing needs and requirements of that fast changing country by usage and conventions and by the decisions of the Supreme Court one can always point out to a specific date on which it was adopted by the delegates who met at Philadelphia. Similarly one can state the date and the year when each of the three organic laws in which the constitution of the Third French Republic was based was passed. It is needless to multiply instances. But no one can assign the date on which the British constitution was struck off and no one can name the person who might be called its fathers. As was remarked by Prof. Freeman in the passage quoted above at no time did representative Englishmen sit together to frame a wholly new constitution as did the Americans the French, the Swiss the Russians and others. The result is that whereas it is possible to produce a copy of the American or the French or the Swiss constitution it is impossible to bring forward a copy of the British constitution. It is not embodied in any single document and is not derived from one source but is a curious admixture or amalgam of charters and statutes, of precedents, usages and traditions of common law and judicial decisions. No attempt has been made to codify its provisions and it is doubtful if the attempt will ever be made. As a notable French writer has remarked, the English have left the different parts of their constitution just where the wave of history had deposited them they have not attempted to bring them together or to classify or complete them or to make a consistent and coherent whole. This scattered Constitution gives no hold to sifters of texts and seekers after difficulties. It need not fear critics anxious to point out an omission or theorists ready to denounce an antinomy. By this means only can you preserve the happy incoherences the useful incongruities the protecting contradictions which have such good reason for existing in institutions viz that they exist in the nature of things and which while they allow free play to all social forces never allow any one of those forces room to work out its allotted line or to shake the foundations and walls of the whole fabric.*

*Boutmy quoted by Marriot English Political Institutions page 289

Being the product of a slow process of growth whose course has been guided partly by design and partly by chance the British constitution is for a large portion of it unwritten The significance of this fact is sometimes overemphasized The distinction between written and unwritten constitution is not at all important some writers, *e g* Strong, even condemn it as false There can be no constitution wholly written or wholly unwritten every constitution is bound to contain both the elements The constitution of the United States of America which is usually regarded as a good example of a written constitution contains many constitutional conventions which are unwritten Even the Indian constitution which is like an iron jacket having no power of growth contains a few unwritten elements When the British constitution is cited as an example of an unwritten constitution all that is meant is that all of its provisions have not been systematised or codified and collected in the form of a single document The task seems to be well nigh impossible because not only do the usages and conventions which form a good portion of it cover a very wide range but many of them are not definite enough to be set down in writing It should also be remembered that the proportion of the unwritten to the written part is very much larger in the British than in any other constitution This may be one of the reasons why it is described as mainly unwritten in contradistinction to the constitutions of other countries The more important portions of the written and the unwritten parts of the British constitution will be described in other connections.*

Far more vital than the aspect above described is the *flexible* nature of the British constitution Its strength and virility flow from its flexibility and not from its venerability or unwritten character. It can be said that it is a living and growing constitution chiefly because it is flexible. It could be adapted and adjusted to the needs of the people from time to time as the conditions demanded because it is flexible The best illustration of its flexibility is furnished by the fact that whereas the American people had to divert their energies to the presidential election twice in the course

*It is unwritten in the sense that it was never formally struck off and adopted at any particular date

of the great world war which has just ended the British Parliament could easily prolong its life beyond the normal span of five years for the duration of the war and thus save the nation from the turmoil of a general election at a crucial moment The British people found their Prime Minister unequal to the task of waging war against Germany in 1939 they could easily get rid of him and instal another person as the Prime Minister because theirs was a flexible constitution The American could not similarly change horses in themid stream if found inefficient

The British constitution is flexible because it makes no distinction between constituent authority and ordinary law making authority The British Parliament can alter and amend the constitution in the same manner and by employing the same procedure as is adopted for ordinary law making In Great Britain there is no special machinery for effecting constitutional changes and no such distinction between *constitutional law and statute law* as exists in the United States In consequence changes in British constitutional machinery can be effected not only as a result of usages and precedents but also by means of formal Acts passed by Parliament The latter is now a days the most important means of effecting constitutional changes. It may however, be pointed out that though legally the most flexible of all constitutions the British system is one of the systems most conservatively and grudgingly modified by deliberate legislative enactments

Closely connected with the flexibility of the British constitution is the *unrestrained legal supremacy* of Parliament It has been shown above that it can alter and amend the constitutional practices and is not required to employ any special procedure for the purpose. There are no legal limits to its legislative competence Legally, it has the power to alter or repeal any charter statute or agreement, it can put an end to any usage and overturn any rule of common law It can also secure that any judicial decision have no effect. There is no authority higher than it which can sit in judgment over its acts and pronounce them un-constitutional on the ground of their inconsistency with the law of the land. No act of the British Parliament can be declared unconstitutional

in the sense in which the Supreme Court can pronounce an Act of the American Congress unconstitutional The omnipotence of Parliament is one of the most noteworthy features of the British constitutional theory It is of course legal only in actual practice Parliament works under powerful moral and practical restraints The principle that no far-reaching changes in the governmental system can be made until the electorate has had a chance to pass judgment upon it is gradually developing It has not yet become well established

There is however a sense in which an act of the British Parliament can be regarded as *unconstitutional* British *public opinion* can brand it as unconstitutional if it is found to run counter to British traditions and is regarded as un British *e g* the legalisation of the detention of a person in jail without due process of law or the abolition of the trial by Jury

The most distinctive and unique feature of the British constitution is neither its flexibility nor yet the unrestrained legal competence of its Parliament, because the constitutions of other states too are flexible and give their parliaments omnicompetence The constitution of a totalitaraim state like *Italy* or *Germany* (*before their* collapse in the last war) may be as flexible as that of Great Britain, and the Parliament of New Zealand enjoys the same type of supremacy as that of *Great Britain* Its *unique feature is to be found in* its *unreality* in the great divergence between the theory and practice of government A writer has wittily remarked that in Great Britain 'nothing is what it seems to be, or seems to be what it is' A picture of the government as it is in its actual working at any time —say in the present century—would be very much different from what it would be if it were to be constructed from its written records and the forms and language used in describing its activities There is a curious opposition between the actual and the formal elements in the British constitution If one were to judge by the language in which the Acts of the British Parliament are declared to be enacted, *one should conclude that Great Britain* was *under a* despotic monarchy It is the King who enacts laws with the consent and advice of the lords of the realm and the commons All officers

of the government are appointed in the name of the King The Army the Navy, the Air Force the Post Office the Courts, and even the Opposition is His Majesty's The phraseology of the official documents would not reveal that there was popular government in the country Again in theory it is Parliament which is sovereign, it makes and unmakes the ministeries and has complete control over the legislative and financial activities of the government in actual practice it has become the servant of the Cabinet the initiative and control over legislation and finance have passed away from it into the hands of the Cabinet It is only with a curious disregard for the actualities that the Cabinet continue to be described as an executive and not as a legislative body. Once again in theory it is the King who selects his Ministers who are still described as 'His Majesty's servants' while everybody knows that they are the choice of the Prime Ministers and are popular servants

The cause of this divergence between theory and fact partly lies in the way the British constitution has grown and partly in the habits and temperament of the people Great Britain began as a despotic monarchy and developed ceremonies and forms of expression characteristic of the system As the transfer of power from the absolute monarch to the people was slow and gradual and not sudden or cataclysmic, the structural elements of the government and their formal powers were allowed to remain mostly unchanged but their balance and adjustment were altered The king still retains the symbol of power though he has completely lost the substance of it

The British people have had no revolution for more than two and a half centuries therefore they have not been called upon or compelled to clean the slate as the French were at the end of the great Revolution They have been content to provide for the immediate necessities and have avoided systematization The result is that the constitution is encumbered with survivals having no relation to the actualities there has come to exist a divergence between theory and practice The British are a practical people with little regard for logic or consistency.

It remains to draw attention to another important feature of British constitutional practice, namely, *the rule of law*. It is important because it is prized by Englishmen as a precious safeguard of their freedom In countries like the United States of America the personal liberties of the citizens are guaranteed against infringement by the legislature and the executive Such rights are included in the constitution in the form of a Bill of Rights which no government can override or ignore In Great Britain the rights of the citizens are not enumerated and defined in any single document or statute nay, some of them are not mentioned in any Act whatsoever This does not mean that the Britishers are less secure in the enjoyment of their rights and liberties than the Americans Civil liberty is as secure in Great Britain as anywhere else in the world It is the observance of the famous 'Rule of Law' which achieves this result more than anything else This precious principle was never enacted as a statute it is however implied in a long line of parliamentary measures and judicial decisions and is therefore firmly rooted in common law Following Dicey we may resolve it into the three following propositions —

(1) 'That no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land'

(2) That not only no man is above the law but (what is a different thing) that here everyman whatever be his rank or condition is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunal'

(3) 'That with us the law of the constitution the rules which in foreign countries naturally form part of the constitutional code, are not the source but the consequence of the rights of the individuals as defined and enforced by the courts *

The meaning of the first proposition is clear and simple It demands that the government may not arrest and detain a person in custody, take away his property or curtail his personal liberty

*Marriot op cit pp 35-36.

except in accordance with the accepted principles of law as interpreted and enforced by law courts It protects the individual citizen against arbitrary action on the part of the government In other words it secures the supremacy of law No one can be punished except for a breach of law proved to the satisfaction of a law court What this signifies can be best understood by contrasting it with what prevails in a country like India where there is no rule of law The executive in a British Indian Province can arrest and detain a person in jail for a long period under Regulation III of 1818 It can arrest a person on suspicion and try him in camera through its own judicial officials In Indian States matters are still worse The State authorities can expel a subject from the State and confiscate his property without any proved charge against him What happened in the country at large during the pendency of World War II is utterly opposed to the Rule of Law

The second proposition means that all persons, private citizens as well as government officials are subject to the provisions of the ordinary law of the land and amenable to the jurisdiction of the ordinary courts It denies any privileged position to any person or class of persons There is not one type of law and one set of courts to adjudicate disputes between private citizens and another kind of law and another set of courts to settle cases instituted by citizens against government servants for injuries or losses resulting from the official acts of the latter The latter system prevails in France and other countries of continental Europe The system is known as Administrative Law and Law-courts and shall be discussed more fully in another connection

The third proposition is not so vital and important as the first two It mainly draws attention to the fact that instead of the constitutional laws being a guarantee of the personal liberties of the citizens, they themselves are the results of the ways in which law courts have sought to protect the citizens against tyrannical and arbitrary acts on the part of despotic monarchs It is an implication of the truth previously stressed that the British constitution is the product of a slow and almost unbroken process by which the British

kings lost the substance of power and retained merely its external symbols

It is the view of some prominent writers that there has been some decline in reverence for the rule of law in recent times in England During the first and the second World Wars laws like the Defence of the Realm Act were passed empowering the executive to order the internment of any person in the interest of public safety It must however be admitted that the amount of damage done to the principle of personal liberty in England by the steps taken during the war was nothing as compared to the results in our country or even in a country like France It may also be noted that in so far as rule of law denies any distinction between ordinary law and what has been called administrative law, the English boast of the supremacy of rule of law has less to rely upon to day than in the past The volume of administrative or executive legislation is fast increasing in amount * But so far as the first of the three propositions enunciated above is concerned, it may be maintained that both tradition and public opinion are strongly opposed to any infringement upon personal freedom not necessitated by national emergency

A few other features of the British system may also be noted It is unitary as distinguished from federal In it there is no *statutory* division of powers between central and local or divisional governments, the totality of governmental powers is concentrated in one government and is exercised from one centre There are, of course counties, boroughs and other local areas enjoying a good deal of power and authority in the management of local affairs but all such powers are a gift from the central government and can be reduced or withheld at the discretion of the granting authority Local bodies are subordinate agencies and exercise only delegated powers In the second place, the system combines the two rather incompatible principles of separation of powers and concentration of responsibility. It embodies the first in so far as it provides for three separate organs—the executive, the legislature and the judiciary—and keeps their spheres distinct. The executive and administrative agencies

*See Marriot op cit xli—li

are subject to much less legislative control than in France and the U S A and the judiciary cannot check and control the legislature and the executive through the power of judicial review But inspite of the appearance of separation of powers and apart from the strict theory of the constitution, there is a concentration of power and authority in the cabinet the like of which is not found in any other country The leadership and dominance of the cabinet in government which according to some commentators amounts to dictatorship is one of the outstanding features of the British political system Something more will be said about this phenomenon in a later chapter Lastly it may be noted that it is a mixed constitution it contains and combines in an organic whole the monarchic, the aristocratic or oligarchic, and the democratic principles. The reigning monarch who is usually styled as 'Our sovereign Lord the King supplies the monarchic element, the House of Lords represents the aristocratic or oligarchic factor, and the House of Commons supplies the democratic element Of the three the democratic is the most vital and powerful factor on account of the central position occupied by the House of Commons the British system may be described as democratic It is democratic because the government is carried on in the name of the people and in accordance with the views freely expressed by a majority of the people at the general election Elections are free and no attempt is made to crush or stifle the opposition Freedom of speech and freedom of association so vital to democracy, are fully provided for Inspite of the presence of capitalism and inspite of its imperialism the British system is democratic, so far at least as the British people themselves are concerned The advent of Labour Government as the result of an electoral victory bears out the point

Constituent Elements of the British Constitution—It was pointed out above that the British constitution is not contained in a single document but is a composite whole consisting of different elements These elements may be grouped under two main heads, the *laws* of the constitution and its *customs* or *conventions* The difference between the two parts does not lie in the written character of the

former and the unwritten nature of the latter in so far as there is a good portion of constitutional law which has not been reduced to writing It may be said to lie in the fact that the courts will recognise and enforce only what is known as constitutional law they will not take note of and enforce constitutional conventions *however important and old they might have become* * The *moment* a constitutional custom is recognised by courts it becomes a part of constitutional law.

Within the *law* of the constitution itself one may distinguish four different groups In the first group we may place historic documents like the Magna Charta and the Bill of Rights† which embody solemn agreements arrived at between the monarch and his subjects at critical periods To the second group may be assigned parliamentary statutes like the Habeas Corpus Act of 1679 the Act of Settlement of 1701, the Reform Acts of 1832, 1867 and 1884 the People s Representation Act of 1918 the various Acts which reformed and systematised local self government, and the Parliament Act of 1911 Some of them defined the powers of the Crown, some regulated the franchise and others guaranteed civil rights to the people The judicial decisions fixing the meanings and defining the limitations of charters and Parliamentary statutes constitute the third important element of the constitutional law These three groups exist in the written form The fourth group consists of the principles of common law according to which the functions, powers, methods and relationships of government are regulated e g, the right of freedom of speech and assembly, the prerogatives of the Crown, the right of trial by jury These principles were never enacted by Parliament but grew up on the basis of custom and usage They are, however recognised by law-courts They together with the customs or conventions of the constitution to be explained below constitute the *unwritten* portion of the British constitution, whereas the first three elements of the law of the constitution form its *written* portion With the passage

* For a detailed account of the difference see below page 16.

†For the contents and significance of the Magna Charta & the Bill of Rights see the next chapter.

of time the proportion of the written to the unwritten part tends to increase

Constitutional Conventions — The charters, statutes, judicial decisions and principles of common law to which reference has been made in the foregoing constitute only one part of the British constitution. The other part—and it is the larger part to-day—consists of what are generally known as *Constitutional Conventions*. By constitutional conventions we mean all those understandings, habits and practices, which though outside the written law and nowhere recognised by it, regulate a large portion of the day to day relations and activities of even the most important public authorities. They determine the manner in which the legal framework of the constitution works; they are the means by which it is kept in touch with the changing social needs and political ideas of the people. It may be said that the conventions provide flesh and blood to the bony structure of constitution or to change the metaphor they are the lubricant for the constitutional machine.[1] It is chiefly by their means that the British constitution has been able to grow and adjust itself to the requirements of the times. It is not possible to make a complete list of the conventions existing in the British constitution but their nature and importance can be easily illustrated by enumerating the principal ones recognised and acted upon by the politicians and statesmen. The following are the important ones —

1. Parliament must be convoked at least once a year. 2. A ministry which has lost the confidence of the House of Commons must resign unless it can secure a dissolution. 3. The Crown usually grants a dissolution on the advice of a ministry which has not recently received a dissolution. 4. If the verdict of the electorate goes against the ministry, it must resign in favour of the party which has secured a clear majority. 5. The Crown must call the leader of the majority party to form the government. 6. The Cabinet is collectively responsible to Parliament for the advice it gives to the Crown. 7. The Crown may not do anything except on the advice tendered by a minister responsible to Parliament. 8. The House of Commons cannot consider any proposal for spending money,

levying or raising a tax except on the recommendation of the Crown* 9 The King must give his assent to a Bill passed by Parliament 10 The Speaker of the House of Commons must keep himself aloof from party politics. 11 The Speaker of the previous House of Commons is elected without contest from his constituency and to the Speakership so long as he desires 12 Lay peers do not take part in the legal work of the House of Lords It would appear from the foregoing list that almost the entire cabinet system as it works in Great Britain rests upon constitutional conventions It is well to remember in this connection that the cabinet system is the most fundamental and pivotal feature of the British constitutional machine without which it would not be what it is Thus even though they nowhere appear in statute books and form no part of the *law* of the land written or unwritten the conventions are as essential a part of the British constitution as the statutes etc No student of it can possibly hope to understand its spirit and working if he were to ignore them

Though England is the classic *home of conventions* it cannot be said that it is a peculiarity of the British constitution to have them There can be no constitution in the world which does not develop its own conventions with the passage of time they are found in all political systems. All that can be maintained is that customs and conventions play a much larger and more vital role in the working of the British constitutional machinery than elsewhere Matters which are determined and regulated by the written law of the constitution in other countries are still regulated by conventions and usage in Great Britain The reason for it is to be found partly in the manner in which her political system has developed and partly in the British national temperament Most of the conventions came into being in the long struggle between the Crown and the people they helped in the peaceful and gradual transfer of power from the King to the House of Commons

Several questions arise about constitutional conventions The following are the two important ones How do they differ from

*This is standing order No 66 of the House of Commons The Crown in this context means the cabinet.

constitutional law? What is their sanction? An attempt will be made to answer the question which follows.

With regard to the first question it may be said that the distinction between constitutional laws and constitutional conventions is not really fundamental at all. For the technician but not for the masses for whom it does not matter much if a constitutional practice has the sanction of law behind it or is a convention merely. The former may however offer a distinction between them. Firstly he may point out that laws have a greater sanctity; there is a greater reluctance to break them. Obedience to a law of the constitution is usually legally fundamental; obedience to a convention is not recognised as equally fundamental. This is no doubt true, but the matter is largely psychological. A rule of law is obeyed not because of its form but because of its content. A convention may be as vital and fundamental as any law and then it would be as difficult to violate the former as it would be to break the latter. It is not even conceived of a Ministry being defeated on the floor of the House of Commons on a vital issue and yet not resigning or appealing to the country. It is equally difficult to expect that the King will refuse his assent to any Bill passed by Parliament. Less important conventions may be deviated from with more or less ease. In the second place there is no formal method of determining whether a convention has been violated. The courts of law take note of breaches of laws but not of conventions. In other words, whereas a law of the constitution would be enforced by the courts, a convention would not. This is true but in a majority of cases it may be explained on the ground that breaches of conventions are usually less obvious than the breaches of law and can be 'more easily clouded by a fog of misunderstanding'.* Lastly, laws are precisely formulated, while conventions are not. They grow out of practice and it is nobody's business to give them proper shape and form. For example the practice that a peer shall not be chosen as the prime minister has not yet received as clear and precise a formulation as the convention that the King may not do a public act except on the advice of a responsible minister. Some of the conventions however are very definite and precise.

*Jennings, *Cabinet Government*

Coming to the question, why the conventions are so scrupulously followed, we may say that it admits of no fully satisfactory answer Prof. Dicey, who was the first writer to use the name *convention* for all the understandings and usages by which a constitution is overlaid when it has been at work for some time, held that the most important conventions are obeyed because they are so bound up with the constitutional laws that their violation would mean a violation of the laws themselves He illustrated his answer in the following way If Parliament is not summoned at the proper time and the financial year is allowed to advance without the passing of the annual Army Act and the annual Appropriation Act, the disciplinary authority of the government over the army would cease and the whole machinery of government would run out of gear Failure to observe the convention would thus mean a breach of the constitution itself There is force in the argument; the evil consequences arising out of the non observance of constitutional conventions do prevent us from violating them But this is not a complete answer Not all conventions are similarly bound up with the due observance of the laws the less important of them may be ignored without coming into conflict with the constitutional laws In the second place, there is nothing to prevent Parliament from changing the constitution in such a manner as to avoid the annual appropriations and the annual Army Act The budget may be made biennial or even triennial, and in that case the constitutional necessity of annual sessions of Parliament shall cease This hypothetical case shows the unsatisfactory character of Dicey's answer The answer given to this question by Lowell is more satisfactory He says that conventions are observed because they constitute a code of honour 'They are, as it were, the rules of the game, and the single class in the community which has hitherto had the conduct of English public life almost entirely in its own hands is the very class that is peculiarly sensitive to obligations of this kind. Moreover the overt fact that one class rules by the sufferance of the whole nation as trustees

for the public, makes that class exceedingly careful not to violate the understandings on which the trust is held"* In short, according to Lowell the force of public opinion is the sanction behind the conventions of the constitution The public expects that Parliament would be convened every year and that the government defeated in the House of Commons over a vital issue would resign If these things do not happen there is bound to be great resentment in the public, and it is the fear of a censorious and displeased public which makes the different parties observe the conventions

Like the laws of the constitution they too ultimately rest on acquiescence So long as either a law or a convention is rendered necessary by current ideas and theory, it would be observed ; the moment it becomes discordant with social necessities and arouses social opposition, it shall be discarded This also shows that the distinction between the laws and the conventions of the constitution is not of fundamental importance.

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*Lowell *The Government of England* Vol I pages 12—13

CHAPTER II
Evolution of the British Constitution

Introductory.— Several of the political institutions we find in Great Britain to day strike their roots so deep into the past that their forms and functions cannot be properly understood without some knowledge of their history A little peep into British history as an introduction to our main study is thus indispensable

The Anglo-Saxon Period — Prior to the Saxon invasion England was inhabited by Celtic tribes and was a part of the Roman Empire The withdrawal of the Romans left the people defenceless and weak against the Danes, the Angles and the Saxons who arrived in large numbers, drove the Celts westwards and established seven districts or kingdoms each with its own chief In course of time one of the seven chiefs gained supremacy over the rest and England thus got a monarch Monarchy or kingship is therefore an Anglo-Saxon product But kingship never became strong in Saxon hands, and England remained a loose aggregation of tribal commonwealths It was not before the advent of William the Conqueror that the country got a strong central government William showed great tact, resourcefulness and foresight in making himself the master of the land in a measure never attained by any Saxon monarch The Anglo-Saxons gave to England another institution also They developed a system of local self-government which attained a fair degree of uniformity throughout the entire kingdom and thus created a bond of national unity Each village had its own local government A number of villages were formed into districts called hundreds each of which had its own local assembly The hundreds were formed into shires,— the progenitor of the modern county In their villages, hundreds and shires the English people learnt their first lessons in self-government and developed the method of choosing their representatives The local institutions founded by the Saxons were much stronger than the kingship established by them.

The Norman Period.— The Norman period inaugurated by the conquest of England by William of Normandy in 1066 constitutes an important epoch in the development of British political institutions As has been stated above William was successful in establishing a strong central government But he also wanted to win the good-will of the people, and therefore allowed them to retain their old customs, institutions and laws, changing them only so far as was necessary to consolidate his royal power There thus came about a fusion of Saxon and Norman political ideals to the great advantage of England. The country developed a strong central government and also had the advantage of retaining virile local bodies, even though William and his successors managed to bring them under their control by various measures

Mention should also be made of two new institutions which the Norman kings developed Out of them arose the British Parliament, the Privy Council, the Exchequer and the courts of justice in course of time They were the *Magnum Concilium* or the Great Council, and the *Curia Regis* or the Little Council, The *Magnum Concilium* was nothing but the old Witan of the Saxon kings under a new name It was composed of bishops, officers of the royal household, tenants-in chief, and such other high officials as the king chose to summon to advise him in reviewing the work of administration, deciding policies of the state, making laws and administering justice. It contained no elective element, and met three or four times a year at the call of the king. Though its functions were similar to those of the Witan it was decidedly less powerful and influential than its predecessor, partly because the authority of the king had increased and partly because its members were his vassals Nevertheless it was an advisory body, consulted by the king in the making of laws and levying taxes It also acted as his court of justice It is hardly necessary to say that the king was not bound to accept its advice.

The Great Council did not meet often; and when it did meet, it did not sit for more than a few days at a time But there was

business to be attended to all the while, and therefore there arose the *Curia Regis* or the Small Council It consisted of a small body of officials of the king— his chamberlain, chancellor, steward etc — who were always with him and accompanied him wherever he went Being always available, the king consulted it whenever necessary. There was no separation of jurisdictions of the two bodies The king decided whether to call a meeting of the Great Council or to consult the Small according to his convenience and wishes To what extent did he feel bound to abide by the views of the two Councils is not known The fact, however, that the Norman kings did follow the practice of calling together the leading men of the realm and seeking their advice on important matters of the state was significant This habit hardened into a usage and later on became a constitutional principle 'Out of the plenary sessions of the Great Council the British Parliament arose, out of the Curia grew the Privy Council, the exchequer, and the high courts of justice So the frame of government in twentieth century England owes much to this ancient council with its big and little sessions' *

The Evolution of Privy Council etc.— The story of the differentiation of the Curia into the Privy Council, the exchequer and the courts of justice need not detain us long It should be remembered that in the days of William the Conqueror the Curia performed functions of different kinds It concerned itself with administrative and judicial matters without making any distinction between the two As the amount of work transacted by it grew, the tendency to bifurcate it into two sections developed Gradually its administrative work was separated from the judicial, and the Council split up into two sections One section continued to function as the royal council and became the Privy Council The other section became the parent of the exchequer and the courts of justice It should be remembered that this division or

* Munro *Governments of Europe* page 86

separation took place gradually and without conscious designing and planning

The Evolution of Parliament.— The story of the British Parliament growing out of the Great Council is more interesting and calls for a more detailed account. It should be recalled that originally only the leading men of the realm, *e g*, the great landowners, used to be summoned to the meetings of the Great Council But once King John stood in need of money and wanted to levy taxes upon all landed estates of whatever size He desired that the new taxes should be approved by a bigger and more widely representative body, and accordingly directed his sheriffs to send four knights from every county to attend the session of the Great Council at Oxford This is the origin of its enlarged membership It also contains the germ of the well known doctrine 'No taxation without representation' The motive of the king in extending invitation to the smaller persons was not to propound any new doctrine but merely to get money in the easiest way Nevertheless he sowed the seed which later on grew into the famous dictum

The next step in the process was the signing of the *Magna Carta* or the Great Charter It made the organisation of the Great Council more definite and also increased its powers By his follies and acts of high-handedness King John had alienated the sympathies of his subjects, and the barons and the clergy threatened revolt unless he agreed to their demands Finding no way out he yielded and signed the Magna Carta on June 15, 1215. By its terms he agreed not to impose certain specified taxes without the approval of the Council and to summon to its meetings all the great barons individually and the knights of the shires by writs through the sheriffs Even though the Great Charter did not secure any rights and privileges for the humbler folk and contained no provision for anything in the nature of representative government but was strongly baronial in tone, it is rightly regarded as a great landmark in British constitutional develpoment It established the

principle that the king must consult the Council in regard to certain affairs as a matter of law and not merely as a matter of choice It also set up a sort of baronial guard over the king to see that he lived up to his agreement In this way it secured that the kings were to govern the country according to established principles and not according to their caprices; it laid the foundations of constitutional government This is certainly a great achievement It should also be remembered that the rights and liberties granted to the barons and the clergy by the Charter were later on extended to other classes of people also It can thus be readily understood why the Britishers look upon the Charter as the palladium of their liberties. It was confirmed several times by the succeeding kings and Parliaments

The next step in the evolution of Parliament was the inclusion of representatives from the towns or boroughs in the Great Council, and thus to put it on a representative basis It happened in the following way. Another king, Henry III, was in need of money. Following the precedent set by King John, he convened a meeting of the Council Unable to arrive at any agreement over the new taxes proposed, he and the barons fell out among themselves In the armed conflict that followed the king was defeated, and the leader of the barons, Simon de Montfort, became the virtual dictator of the state He too wanted money, and called a meeting of the Council to which he invited not only bishops and barons and knights of the shires, but also two representatives from each of the twenty-one towns which were friendly to him Once again, the guiding motive was not allegiance to the democratic principle of popular representation but the desire to secure support from quarters believed to be friendly The practice of inviting town representatives was discontinued after the death of Montfort It was not till 1295 that the practice was revived Edward I was also in need of money for the conduct of wars in which he was engaged and therefore convened in 1295 what has come to be known as the Model

Parliament He invited the barons, the clergymen, the knights and representatives of the townsmen The meeting was large and representative, it consisted of more than 400 persons and included 172 representatives of the cities and boroughs, and therefore was a parliament in the true and modern sense The barons, the clergy, the knights, and the citizens listened to the king's requests as one body but voted the money he wanted separately After listening to the King's plea each group retired to deliberate upon it, and coming back into the presence of the king voted the money separately Had this arrangement into three estates become permanent, Great Britain would have had a legislature consisting of three houses But under pressure of common interests the barons and the higher clergy combined together into one body and formed the nucleus of the House of Lords, the knights of the shires and the townsmen drew together into another body and formed the basis of the House of Commons The bicameral organisation of the British Parliament is thus the result of chance and not of conscious design It became an accepted fact within the next hundred years, and from England travelled to distant corners of the world, our own country included

It thus took more than three hundred years for the Magnum Concilium of the first Norman kings to grow into the British Parliament with its two houses It must also be remembered that Parliament in the fourteenth century was something quite different from the body which bears that name to-day It was not a law making body then The laws were made by the king with the assent of his councillors The Commoners merely presented their petitions to the king The Commoners had no authority or influence in financial matters, their share was limited to giving assent to the taxes proposed by the king An invitation to attend Parliament was considered as a burden to be avoided, if possible, and not as an honour to be eagerly sought, particularly in the case of the townsmen Membership of the House of Commons in mediæval England did not bring either profit or authority.

Gradually, however, the members of the House of Commons began to realise the potentialities of the situation They saw that the king could not do without their support; he needed parliamentary grants They proceeded to make full use of this fact to gain authority in the domain of finance In 1407 Henry IV gave the Commons an assurance that all money grants would, in future, be considered and approved by the House of Commons before being submitted to the House of Lords In this way the Commons acquired the power of the purse The right of submitting petitions was also made the basis of actual share in the process of law-making First of all, individual petitions were merged into a collective petition to be presented on behalf of the House as a whole The petition came to be known as an "address to the throne". At a later stage this request was transformed into the right to participate in law-making by giving their address the form of law. Whereas in the fourteenth century laws were made by the king at the *request* of the Commons (and with the assent of the Lords), in the following century they came to be made by the king *by and with* the advice of the Commons and the Lords The Commons acquired this power through its right of granting supplies to the king who needed money to run the government and fight wars

It must not be imagined that with the acquisition of the law making and financial powers in the sixteenth century Parliament had become all powerful. Authority still lay with the king who was the real executive and possessed power He was in a position to secure from the Commons whatever he wanted and coerce it into obedience by threats of violence Queen Elizabeth is reported to have sent to prison two members of the House of Commons for advocating measures she did not like. A recalcitrant House could be dissolved whenever the king wanted, an obliging House could be kept for several years, for there were no laws regulating elections. The list of boroughs invited to send representatives was generally determined to suit royal interests

Inspite of the powers Parliament had been able to acquire during the preceding centuries, the Tudor monarchs were in a position to rule in a more or less autocratic manner during the sixteenth century They were, however, tactful enough to hide their autocracy by consulting Parliament Their successors, the Stuart kings, were not so statesmanlike, and the first of them, James I, precipitated a conflict with Parliament by insisting on his right to rule by divine right Fortunately the conflict did not result in an open rupture during his reign His son and successor, Charles I, was less fortunate and more tactless After having ruled without any parliament for eleven years he provoked an armed conflict with his opponents which resulted in his execution in 1649 After his death a republic was proclaimed in the country, and kingship and the House of Lords were abolished Oliver Cromwell was named the Protector, but he too found it difficult to deal with the House of Commons After a short experiment with a republican constitution lasting for a little over a decade the country reverted to monarchy in 1660, with Charles II another Stuart, on the throne He managed to pull on with Parliament but his brother, James II, who succeeded him was of a different temperament and invited trouble by trying to set aside a law Parliament had made Finding himself without any supporter James II fled to France, and Parliament invited William, Prince of Orange and his wife, Mary, the eldest daughter of James to occupy the empty throne As a result of this bloodless revolution William and Mary became the joint sovereigns in 1689

In order to consolidate the gains of the Revolution and avoid recurrence of friction, Parliament adopted in 1689 one of the most significant documents in English constitutional history, called the Bill of Rights This document summed up the results of the Bloodless Revolution and of the entire constitutional development till then, and put them in an unmistakable form It declared that the king could not suspend any law, levy any tax, and keep a standing army during peace-time without parliamentary approval.

It affirmed the right of the members of Parliament to freedom of speech and discussion, the right of the citizens to petition the king, and the right of Protestant subjects to bear arms for their defence It also laid down that Parliaments ought to be held frequently and that elections to it should be free One might say that in virtue of the Bill of Rights the divine right of kings was dead and British monarchy became limited The basic *principles of the British constitution, namely rule of law and* legal supremacy of Parliament, became firmly established, their validity was not to be called in question

Constitutional Development after 1689 — The constitutional development that took place in Great Britain after 1689 is of a character different from that which preceded it, it relates more to details than to fundamentals By that year the outlines of the constitution were practically complete, what was needed and what was accomplished in the period that followed was the filling in of necessary details It is the growth of the cabinet system and the development of political parties which completed the political structure and gave it flesh and muscles Though the two phenomena are inter connected, the development of the one reacting upon that of the other, in what follows we will confine ourselves to the rise of the Cabinet, and shall deal with the growth of political parties in another context

The events of 1688—89 had put the mastery of Parliament over the King beyond the shadow of doubt and the possibility of challenge; they had brought the British Sovereign into political dependence on the House of Commons But there was one great lacuna; *there was no machinery by which Parliament could exercise effective control over the king in the day to-day affairs* The king still possessed large prerogatives and exercised great control over public acts and policies, he had not become the reigning monarch he is to day Not until Parliament was in a position to bring the exercise of royal prerogative under its

control and reduce the power of the king in the administration of the affairs of the State, could its supremacy be complete. It was the growth of the Cabinet as the pivot of the whole machinery of government which led to the realisation of this goal

The process was neither simple nor guided by conscious design, it was more casual and accidental than necessary, more due to the force of circumstances than to any growth of the spirit of liberty It had two aspects, (i) diminution of the powers of the king, and (ii) the growth of the powers of the Cabinet and its responsibility to the House of Commons A few words about each of them are necessary

(i) Diminution of the powers of the King — It should be remembered that William of Orange and his wife Mary, and after them Queen Anne were not mere titular heads of the state like their twentieth century successors, they enjoyed vast powers and exercised great control over the state policies and administration, notwithstanding the Bill of Rights and the Act of Settlement But the early Georges who followed them were to all intents and purposes foreigners Knowing little English and perhaps caring less for British affairs they allowed all the powers their predecessors had exercised to slip from their hands and fall into those of their ministers In other words, circumstances combined to reduce them to virtually *reigning* monarchs. Their successors tried hard to regain the lost powers but in vain It was, however, not till the days of Queen Victoria that British Monarchy became really constitutional and all real power was transferred to the Cabinet.

(ii) Development of the Cabinet — Just as it was through several stages spread over several centuries that the present Parliament arose out of the Great Council of Norman kings and acquired supremacy over the executive, similarly the present cabinet developed out of the privy council through several stages

and in the course of several centuries The steps by which it approached its present position may be summarised thus

1. The Cabinet at first appeared in the shape of a small, informal, irregular group selected at pleasure by the king from the larger body of the Privy Councillors, privately consulted by him, but with no power to adopt any resolutions on the state policy or perform any act of government without the assent of the Privy Council It was not known as the cabinet This was prior to the reign of Charles II The practice was rendered necessary by the large size of the Privy Council

2 The second stage was reached in the reign of Charles II. He found the Privy Council 'too large for despatch and secrecy', and for advice resorted to a small group of leading ministers This group came to be known as the *Cabal*. It, however, did not acquire any recognised status and did not displace the Privy Council from its position of being the only authoritative body of royal advisers For a time the practice had to be given up because of the distrust and jealousy it awoke in the minds of some persons Charles II had to govern with the help of a reconstructed Privy Council towards the close of his reign

3 The next stage in the development of the Cabinet system was reached in the reign of William III, to be more definite in (1695) William discovered that work could not go on smoothly so long as his ministers were drawn from the ranks of both the groups which had emerged in the House of Commons He therefore started the practice of entrusting all the great offices of the State to persons drawn *exclusively* from the party with a *majority in the* House His ministry thus approached the modern type The Privy Council was pushed in the background, and the Cabinet became the sole supreme consultative body and the real executive authority in the state But still there was no prime minister who could act as the political chief of the Cabinet The king continued

to preside over the meetings of his ministers who were *his* servants and helped him carry out his wishes

4 The fourth stage was reached in the reign of the early Georges who ceased to preside over the meetings of their cabinets because of their ignorance of English language, and were content to leave the administration of state affairs to their ministers To Sir Robert Walpole belongs the credit of being the first Prime Minister in the modern sense (*i e* owing his position to being the recognised leader of the majority party), and having administered the state affairs according to his own political ideas and convictions By resigning his office in 1742 on an adverse vote in the House of Commons he set the precedent which became the basis of one of the cardinal principles of parliamentary government During the preceding period responsibility to the House of Commons was enforced through the clumsy method of impeachment

5 The ascendency of the Prime Minister and other features of the cabinet system took shape and became part of the theory of the British constitution in the course of the last century.

It will thus be seen that the idea of the Cabinet as necessarily consisting of members of the legislature, belonging to the political party possessing a majority in the House of Commons, prosecuting a concerted policy, working on the principle of individual and collective responsibility to the House of Commons, and acknowledging common subordination to one political leader, is the product of a long evolutionary process extending over several centuries. It may also be added that for a very long time it lived and functioned simply by understanding without any line of written law. Recently, however, it has been recognised by constitutional law and has ceased to be a constitutional convention

Other Constitutional Developments— Besides the rise of the cabinet system and the growth of political parties there are a few other constitutional changes that have occurred since 1689.

One of the most important of them is the democratisation of the House of Commons It started with the Reform Act of 1832, and was completed with the passing of the Representation of the Peoples Acts of 1918 and 1926 Another change is the gradual decline in the status and powers of the House of Lords which found its culmination in the Parliamentary Act of 1911 It may also be added that local self government was reorganised and democratised between 1835 and 1929 and that the judicial system was overhauled during the seventies of the last century The growth of the cabinet dictatorship and the subservience of the House of Commons to the cabinet is one of the most notable developments of the present century Reference may also be made to the enormous increase in the activities and functions of government The union of England and Wales, first with Scotland in 1707, and next with Ireland in 1800, the creation of the Irish Free State in 1921—22, the growth of the far flung British Empire and the grant of Dominion Status to some of its members, though important events in themselves, may be passed over in this brief review of the evolution of British constitution in so far as they did not vitally affect the growth of the political structure in Great Britain itself

Constituent elements of the Governmental Machinery — We may conclude this brief review of the evolution of the British constitution with an enumeration of the various elements of which the governmental machinery is composed at the present time In the succeeding chapters we propose to take each one of these elements for detailed study

As has been pointed out earlier Great Britain has the unitary form of government and not federal In this respect she resembles France but sharply differs from the United States of America It means that for the whole country there is but one legislature, one executive, and one supreme judiciary To day the three functions of government are performed by three different organs These

are (*i*) the King in Parliament to make laws, (*ii*) the Cabinet, the Civil Service and a whole array of departments to execute and administer the affairs of the state, and (*iii*) a number of courts to administer justice. But in the old days when the country was ruled and governed by the Saxon, the Norman and the Tudor kings in a more or less despotic manner, this differentiation did not exist. The king made laws and applied them, and also doled out justice to his subjects. The differentiation which is an important feature of the governmental system to-day is the result of the constitutional evolution described in the foregoing pages. The legislative and judicial functions have been taken away from the king and entrusted to other organs. The executive function alone remains vested in the Crown. One might thus say that in Great Britain *full effect has been given to the famous principle* of Separation of Powers. It should, however, be noted that its effect has been very much modified by the development of the cabinet or parliamentary form of government under which the executive and the legislative organs are brought into close and intimate co-operation. Indeed, so vital is the modification that, *in view of the dominating position occupied by the Cabinet* in the affairs of the state, it may be said that *concentration of responsibility* in the cabinet, and not the separation of powers, is the distinguishing feature of British constitutional practice. Nothing like this concentration of power and responsibility is found in the United States of America or in France.*

Coming to the three main organs of government we may say that the Legislature consits of the King and Parliament organised into two chambers, called the House of Commons and the House of Lords. The King is not a member of any of the two Houses, but is an integral part of the law-making machinery in as much as no Bill passed by Parliament can be placed on the statute book and enforced by the law courts unless the Royal assent is given

* See above pages 11 and 12

to it We will devote separate chapters to a d scription of the constitution, powers and functions of the House of Commons and the House of Lords

The supreme executive authority of the state is vested in the crown This statement is not likely to be easily intelligible to the beginner who is not expected to know what the Crown is He is likly to confuse the Crown with the reigning monarch from which it is not dissociated either in legal theory or constitutional practice The easiest way to understand the nature of the executive organ in Great Britain is to distinguish between the formal and the real executive The king is the formal executive, and the cabinet is the real or political executive All executive action is taken *in the name of* the king but not *by* him Governmental measures are being continually taken and executive acts performed in the name of the king or the crown about which the king may personally know little or nothing and to which he may sometimes be opposed All this is possible because in Great Britain there is the distinction between the formal and the real executive. There is also the permanent executive called the Civil Service which plays a vital role in administration An account of *the executive organ must contain reference to these three parts of* it It will be conducive to an understanding of what is to follow on this count if the two fundamental principles underlying the British system are grasped at the outset They are as follows •

(i) The king cannot perform any public act involving the exercise of discretionary powers, except on the advice of a responsible minister, ,betokened by his countersignature, and *(ii)* for all such actions performed by or through the ministers, the latter are responsible to Parliament, singly as well as collectively The king can do no wrong in the sense that he cannot be held responsible for any public act done in his name The *responsibility is of the ministers and not his* *

* For another interpretation of the saying 'The king can do no wrong' see *infra*, Chapter III Page 48

The British system of law is one of the three systems prevailing in the world, the Romanesque and the Mohammedan systems being the other two It has important features on account of which it deserves carefuf study.

Political parties have become an important organ of government in every state today, even though they may not be always recognised by law Reference must be made to the three main political parties functioning in Great Britain. Local self-governing institutions fike the county and borough councils are an integral part of the governmental machine and therefore call for more than a passing reference. One chapter shall be devoted to a study of the British system of local self-government. We do not propose to deal with the governmeot of Irelaod or of any other dominion as a part of our study of the British constitution

We will take up the executive organ first for study. Historically it is the oldest, and some of the most vital distinctions and priociples of British constitution are involved in it

CHAPTER III

Formal Executive

The Crown, the King and the Privy Council

Distinction between the King and the Crown.— England started on her constitutional journey as an absolute monarchy. Her earlier kings, *Saxon, Norman, Tudor and others* reigned as well as governed During those days there was no distinction between the king and the crown, the king exercised all the powers and prerogatives of the crown To day the situation is quite different As Gladstone once remarked, 'There is no distinction more vital to the practice of the British constitution or to the right judgement upon it than the distinction between the Sovereign and the Crown' Failure to make this distinction would lead the student to ascribe powers to the British king which he does not at all possess For example, when it is said that the *Crown* appoints and dismisses ministers, summons or dissolves Parliament, makes treaties, declares war or concludes peace, and punishes offenders, it must not be understood that *the King of England* personally does all or any one of these things He might have done all of them and much beside in the good old days when he ruled and governed, but most assuredly not to day, when he simply reigns but does not govern Our first business must be to understand this most vital of all distinctions

Stated briefly the distinction between the *King* and the *Crown* is the distinction between the monarch as a person and monarchy as an institution Crown is kingship institutionalised The distinction between the two may perhaps be more readily understood if we remember that the King as a person is born, gets crowned, and ultimately dies, he may be dethroned or may himself abdicate The Crown as an institution is never born and never dies; it can neither be dethroned, nor can it abdicate Its powers and functions are not suspended or interrupted by the death of the king This is because it is an abstraction like

the General Will of Rousseau, it may as well be called the Will of the people. The distinction has arisen because of the peculiar manner in which the British people have dealt with royal power in their long contest with it. They did not destroy or dissipate the powers and authority of the king as the head of the state but always tried to bind down their exercise to recognised modes of behaviour which, if duly observed, would make arbitrary action on the part of the king impossible, secure supremacy of law and establish the ultimate sovereignty of the people. This they have been able to achieve to the fullest extent. The monarch in Great Britain to-day is not a semi-divine despot but the hereditary and constitutional head of a parliamentary democracy. He wears the crown and enjoys great prestige but has no powers. The powers once exercised by him have been transferred to the crown. There would have been no confusion, if the king were thus represented in statues and proclamations, in orders-in council and formal documents in general, *i e*, if the distinction between the king and the crown were observed in British legal and ceremonial terminology. In legal theory, however, the king is still the source of all authority. Neither the laws nor the conventions of the constitution make any distinction between the rights, powers and prerogatives of the actual sovereign and those of the crown.

Even though the crown is the central and binding force of the British system, it is not easy to say what it is. On account of its undefinable character it has been aptly compared by Sidney Low to the mythical ether which the physicists postulate as an explanation of many physical phenomena. It resembles the ether in being intangible, and like it may best be described as a convenient working hypothesis. The best way to understand what the crown is, is to know what it does.

Functions of the Crown— In the first place the crown is the supreme executive authority of Great Britain. As such it

looks to the enforcement of all national laws, makes appointments to almost all the high executive and administrative offices, appoints officers of the army, navy and air force, conducts the foreign relations of the country, manages the affairs of the colonies and dependencies and deals with the dominions, exercises the power of pardon and reprieve, and directs administration It is the crown which appoints ambassadors and consuls and credits them to foreign states and issues instructions to them. It also receives the ambassadors and representatives of foreign powers It carries on negotiations with other states and concludes treaties and agreements with them War can be declared and peace made only by the crown It should, however, be remembered that some of the treaties do not become effective unless ratified by parliament. In so far as this executive work is done either by the cabinet as a whole or by individual ministers, they may be said to form parts of the crown.

The crown does not formally make laws, legislation is the concern of King-in-Parliament But through its powers of setting in motion the process by which a new House of Commons is constituted, and summoning, proroguing and dissolving parliament it does, to a degree, participate in the work of legislation also Furthermore, no Bill passed by Parliament can be placed on the statute book unless it has received the royal assent In so far as the king is still associated with the crown, both legally and actually, the share of the crown in legislation is indispensable This share would appear to be very large when it is remembered that it is the ministers of the crown who decide what bills are to be introduced in parliament, and pilot them through it In another way also the crown is concerned with legislation The orders-in-council which are issued in a very large number by the king-in-council have the same force as the laws passed by Parliament It is the business of the crown to issue the orders in council In so far as it is the king who gives the royal assent to the bills passed by parliament, approves the election of the Speaker of the House

of Commons, and summons, prorogues and dissolves parliament (of course, on the advice and with the consent of the chief minister of the state), he is an integral part of the Crown

The Crown is the *'fountain of honour'* also. This expression means nothing more than that all public honours are bestowed by His Majesty His Majesty creates new peerages and confers knighthoods and other titles and marks of distinction on persons recommended by the Prime Minister His own personal predilections do not count in the matter except when at his suggestion the Prime Minister strikes off one name from the list or adds another

An old tradition, which has now ceased to have significance but still persists, describes the Crown as the *'fountain of justice'*. The expression is meaningless for the crown has no judicial functions except deciding appeals from the High Courts in India and the colonies on the advice tendered by the judicial committee of the privy council It cannot create courts or regulate their procedure All that the crown can do is to pardon offenders which is an executive act

The Crown is also the *Head of the Church of England* In this capacity it appoints the archbishops and bishops and gives assent to the rules and regulations framed by the conventions of Canterbury and York

It may be mentioned that the powers of the crown are subject to change They may be reduced at certain points and increased at others The Magna Carta and the Bill of Rights seriously curtailed its powers. The enormous expansion of the sphere of state activities that has taken place (not only in Great Britain but in all countries) has meant a tremendous increase in its powers. The establishment of a new department for carrying on new duties means an addition to the powers of the crown. It is only from this point of view that we can understand the oft-repeated

paradox that in Great Britain the powers of the crown grow as democracy spreads.

From the foregoing it would be clear that the powers of the crown are exercised in a variety of ways. Some of them are exercised by the Cabinet as a whole, some by the Prime Minister, some by individual ministers, some by the privy council and its various committees, and some by the king on the advice of the Cabinet or the Prime Minister, but never on his personal initiative and responsibility except when he appoints a Prime Minister. This should not be taken to mean that the king is not associated with the crown As has been remarked already he is not dissociated with it either in theory or in practice

In the light of the foregoing we may say that as an institution the crown is a subtle and intangible synthesis or combination of the king, the privy council, the cabinet, and to a degree, the parliament

Kingship—Its justification and uses.— From the above account of the distinction between the crown and the king, and of the powers of the former and the manner in which they are exercised it would be clear that the actual sovereign in Great Britain is not at all a directing factor in the government of the country He cannot initiate national policy or control public affairs Though the visible embodiment of the crown and formally vested with all its powers, he cannot exercise any one of them at his own liking and initiative As was remarked in the last section of the preceding chapter, all official orders issued in the king's name have to be countersigned by a minister who becomes responsible for them Under such circumstances the question naturally arises Why retain kingship at all? Why not abolish it and allow the Prime Minister to assume in name the executive headship of the nation which he has got already as

a matter of fact, and thereby save £ 410,000/- which the nation is required to spend on the King annually.*

Several reasons can be advanced for the continued existence of monarchy in Great Britain British temperament has certainly something to do with it The British are a highly conservative people, not at all given to doing things in a radical or revolutionary manner, they did not abolish the institution when they could have done so easily, *e g*, when James II had to fly to France because of a clash with Parliament the British called upon William of Orange and his wife Mary to occupy the vacant throne The truth is that there is no great sentiment for republicanism in the country Popular sentiment has generally been in favour of, rather than against, monarchy. There was, of course, a period when respect for monarchy was at a very low ebb. But during the last seventy years or so, a great change has come about in public opinion and to day respect and affection for monarchy are more deep-seated than ever before Except the communists no section of public opinion wants to abolish monarchy, not even the Labour party which is vehemently critical of the aristocratic House of Lords

The inherent conservatism of the British temperament would not have saved the institution from annihilation, had it not been found useful in important ways It is quite wrong to assert that monarchy has outlived its usefulness; on the contrary, so valuable has it become as the pivot of loyalty for the colonies, the dependencies, and the Dominions, that British imperialism has deliberately increased the prestige of the Crown as a method of gaining its own ends The greatest value of monarchy is to be found in its being the symbol and link of imperial unity It is loyalty to the Crown which keeps the members of the far-flung

* The yearly sum granted to Edward VII and George V was £ 470,000 /. This is technically known as the Civil List, and is determined by Parliament at the commencement of every reign

Empire knit one to the other by the closest of ties Snap this link and the Commonwealth would dissolve into its component autonomous units It is difficult to believe that, in case England transforms herself into a republic with a popularly elected President, Canada, South Africa, Australia and other dominions would pay the same willing homage to this dignitary which they now pay to the hereditary and crowned monarch

A reigning Monarch has a halo, a glamour and a magical personality difficult to associate with an elected President They can be made to subserve domestic interests as much as imperial ends British statesmen have put them to the fullest use as much in one sphere as in the other. They have tried to associate *the royal family with solicitude for those objects which are most* dear to the working classes in such a manner as to make monarchy the symbol of democracy itself Monarchy may be said to have strengthened government 'with the strength of religion'. It appeals to sentiments, which though impalpable, are very powerful One of the reasons for the rehabilitation of monarchy in public esteem and regard is to be found in this 'political use' to which it has been put

In addition to being the symbol of imperial unity and the 'last link of the empire', monarchy in Great Britain has other political uses also Great Britain has the cabinet type of government, and as students of political science know, this form of government requires a titular head of the state distinct from the chief political executive. If the British people were to abolish monarchy while retaining parliamentary democracy, they would be required to have another titular head in its place The only alternative is an elected president with a definite term as *is the* case in France But this would not be a change for the better, on all showing a reigning and hereditary monarch is better suited to function as the formal head of the state than an elected president. It is one of the fundamental principles of cabinet

government that the nominal head of the state should not take sides in party politics and should not be dragged in political controversy A constitutional monarch can raise himself above the din of party strife and stand aloof from it more easily than elected president, he can be depended upon to act in a more independent manner * Unlike the latter, he has no party associations and no party loyalties His training and permanent tenure fit him more adequately to see that the various political parties play their political game according to rules But more of it in the following section dealing with the actual role of the British King in the political life of the country Here only this much may be added that in return for the sum the British people are required to spend for the maintenance of monarchy, they gain political advantages of no mean order In comparison to the services it renders its cost to the nation is insignificant.

The King's Role in British Public Life— The British King is not the mere ceremonial figure-head he is sometimes supposed to be It is true he does not govern the country : he neither controls and directs public affairs, nor shapes national policy. He has to accept the decisions of the Government This, however, does not mean that the great office has been emptied of all force and reduced to cipher The transformation that has taken place in its nature may best be summed up by saying that *influence* has been substituted for *power* The British king wields no power but exercises influence over the course of affairs whose precise amount cannot be determined because it varies according to circumstances, and the capacity and knowledge of the King (Jennings puts it, 'The influence of the Crown depends on him who wears it, the Crown adds dignity but not capacity ' Queen Victoria wielded great influence, the impress of her personality is

* The advantage of constitutional monarchy is that the head of the state is free of party ties A promoted politician can not forget his past, and even if he can, others cannot *Jennings Cabinet Government* Page 501 It is not suggested that hereditary monarchy has no defects Disadvantages there are but the advantages outweigh them

evident on almost every page of British political history during her long reign Her successors Edward VII and George V continued to take active interest in affairs of the state

There are several functions of a political character which the King still performs though only two of them possess political significance When a new House of Commons s constituted, or the government of the day resigns and a new government has to be formed, it is the duty of the king, and of the king alone, to select a person and commission him to form the government Usually the area of his choice is limited, he has to call upon the leader of the majority party and authorize him to form the ministry Most often one or the other party has an absolute majority in the House of Commons and has its own recognised leader In other words, frequently the prime minister is indicated by the political situation But whenever there are three major parties in the field and none of them has an absolute majority, or whenever for some reason the majority party has no formally recognised parliamentary leader, the King may really choose his Prime Minister, e g, in 1924 when he called upon Mr Ramsay Macdonald to form the ministry though he had no majority in the House Such occasions give him an opportunity to influence the course of public life. We do not know the part played by the King in the appointment of Ramsay Macdonald as Prime Minister in 1931 and of Mr Churchill in May 1940

The second important political function of the British King is giving assent to the proposal to dissolve Parliament entailing a general election When a government is defeated on the floor of the House of Commons and the cabinet wants to make an appeal to the country, the King may in strict theory, exercise his discretion and refuse his assent if he thinks an alternative government is possible. It should, however, be noted that assent for dissolution has not been withheld even once during

the last hundred years and more It is difficult for the king to refuse the request

Thirdly, it must be noted that in the interval between the resignation of one prime minister and the installation of another, all political authority and executive power reside in the King. This should not be taken to mean that he exercises control over public affairs It has merely a formal import

The King receives foreign ambassadors, though as a matter of form and always in the presence of one of his ministers He assents to the election of the Speaker of the House of Commons, and reads the Speech from the Throne, though both these functions may be performed by others on his behalf The king gives his assent to the Acts passed by Parliament; without it they cannot be placed on the statute-book But now the assent is given as a matter of routine; it cannot be withheld, however strongly the king might be personally opposed to a measure. The function, indispensable though it is, has become a mere formality It may also be added that the King attends the meetings of the Privy Council when orders-in-council are issued and important administrative legislation passed

Almost all of these functions are exercised intermittently, and only for brief periods From the point of view of the exercise of *royal influence* over public affairs they are of little significance. Far more vital than all of them taken together is the king's 'day-to-day role as critic, adviser, and friend'. It is true that he no longer attends the meetings of the cabinet and cannot therefore exercise any direct influence on the deliberations of his ministers as his Tudor ancestors used to do, but the Prime Minister keeps him fully informed upon the business of the state Before the cabinet meets to discuss important matters, the Prime Minister discusses all of them with the King, explains his views and those of his colleagues on the cabinet and tries to understand the viewpoint of the latter It is not necessary that the cabinet must

always accept the royal opinion, it can reject it entirely and even act contrary to it It is, however, bound to consider the royal advice The exalted nature of the source from which it emanates combined with the great knowledge of men and affairs which the king generally possesses confers upon it a weight which the cabinet cannot lightly disregard Not only does the prime minister thresh out matters with the king before the cabinet meetings, all the decisions it arrives at are also submitted to 'this dignified, authoritative, supremely influential critic', before they are carried out into effect. It is on record that once Queen Victoria softened down the tone of a letter the foreign department had addressed to the United States of America and thus averted conflict with that country The role of the King as the counsellor and critic is specially important in the field of foreign relations

Bagehot once remarked that the British King has three rights : the right to be consulted, the right to encourage, and the right to warn. And he added that a wise and sagacious sovereign would demand nothing more The right to be consulted implies that the king be kept fully informed upon the business of the State, and that every important decision of the cabinet be submitted for his consideration before effect is given to it This point has been explained already Furthermore he has a staff to keep him informed of the development of political life The right to encourage means that the king approves of a certain policy and wishes the ministers to push on with it The right to warn signifies that the sovereign feels that the proposal placed *before him* is bad, that *it is likely to have* injurious consequences. He advances reasons in support of his contention and suggests a way out of the difficulty But it does not mean that he can *oppose* the ministers If after giving careful consideration to the king's advice the ministers feel that theirs' is the right course, the former will give them his support. The correct position of the king in relation to his ministers is brought out in the following imaginary words put

into his mouth by Sidney Low The King says to his minister: "The responsibility of these measures is upon you Whatever you *think* best *must* be done Whatever you *think* best *must* have my full and effectual support But you will observe that, for this reason and that reason, what you propose is bad, what you do not propose to do is better I do not oppose, it is not my duty to oppose, but observe that I *yearn*"* It is the exercise of these rights which gives a British sovereign opportunities to wield influence in public affairs and mould events, and prevents him from being reduced to a mere figurehead. As has been remarked earlier, his advice carries great weight. His exalted position, the fact that if he has been on the throne for about a decade he is expected to have a broader knowledge of public affairs than some of his ministers even, and the further fact that being above party strife and passion he is in a position to consider the matter in a dispassionate and impartial manner, combine to give it a value which may have little relation to its intrinsic worth. Tinsel may become silver Royal orders cannot be slightly disregarded, nevertheless, it should be remembered that it cannot be binding upon his ministers, they may not act upon it.

The important thing to be understood in regard to British monarchs from Queen Victoria onward is that though they did not rule and like some of their predecessors, they were not also passive tools in the hands of their powerful ministers. The *Letters of Queen Victoria* make it abundantly clear that she was an active and insistent agent in the conduct of government She played a considerable part in the selection of her ministers, she could secure the appointment of some and prevent the appointment of other She also interfered in Church appointments The influence of her son, Edward VII, was even greater than her "He was powerful in influencing appointments He was a controlling factor in the complicated manœuvres for army and naval reform He put strong pressure

* The Governance of England page 274

on the cabinet about his views on the government of India "* Similarly George V is believed to have played a notable part during the Irish crisis of 1911-14. It may not be irrelevant to point out in this connection that Edward VII and George V made significant contributions towards the promotion of cordial relations between Great Britain and other countries. It was largely as a result of the visits Edward VII paid to various continental capitals that the *entente* with France was restored, the ancient amity with Portugal and Italy revived, and the friction between England and Germany removed.

Royal influence in Great Britain is not limited to the political sphere alone, it extends to other branches of national activity. Like the ancient Indian rajahs, maharajas and emperors, the British sovereign is expected to patronise art, literature and science.

He is also the head of British society and sets the standard in social etiquette and morals. What the king and the queen and other members of the royal family say and do and think becomes a sort of minor ethical code for the nobility and the well to-do, and through them for a larger circle. It may also be added that in so far as many of the great movements for improving the conditions of the masses are inspired or patronised by members of the royal family, royalty may be said to function as the directing mind of the nation in the sphere of charitable activities. Schemes for providing better houses, medical aid and good nursing, relief in distress are examples of such charitable activities.

Before concluding this account of the monarch's role in the political and social life of Great Britain, it seems necessary to refer to some of the personal immunities and privileges he enjoys and some disabilities from which he suffers. The king may own land and other property and manage or dispose of it any way he

* Laski: *Parliamentary Government in England* Page 398

likes, but no legal action can be taken against him for any such act He cannot be called to account for his personal conduct before any court of law, not even if he were to deprive a citizen of his life or property by any rash or wilful act. He is above law, he cannot do any wrong * Secondly, the nation allows him a handsome allowance out of the state treasury for his personal needs and the maintenance of royal establishment. This is known as the Civil List, and is fixed by Parliament at the beginning of every reign and is not altered during the sovereign's lifetime His chief disability is that he cannot profess any religion other than Protestantism or marry a woman who is not a protestant. If after accession to the throne the king changes his religion, becomes a Roman Catholic or a Hindu, or marries a non protestant woman, his subjects would be absolved of allegiance to him Edward VIII was not allowed to marry the lady he loved, and in consequence he had to abdicate. It may be added that within the reigning family, accession to the throne is determined in accordance with the principle of primogeniture. When a king dies or abdicates, his eldest son succeeds him, if he be not living, his eldest surviving son, or in lieu of him, the eldest surviving daughter inherits the throne

The Privy Council— Since most of the formal functions of the crown are discharged through the instrumentality of the privy council, it seems advisable to say a few words about this relatively obscure institution before concluding this account of the formal executive of Great Britain Into its origin we need not go, something was said about the way in which it grew out of the Curia Regis in a previous connection Here we propose to describe its present composition and functions

*On page 83 reference was made to this fact, but in a different context There the saying 'The king can do no wrong' was taken to mean that he is not responsible for any public act done in his name In this context the saying bears a different meaning It signifies that he is above law, that he is immune from the authority of law courts For a complete explanation of the statement reference must be made to both the meanings either meaning in itself, would remain incomplete without the other

Its strength is not fixed, it varies from time to time At the present time it consists of about 320 persons To it belong the Archbishops of Canterbury and York and the Bishop of London, a large number of peers including practically all those who have held high administrative posts in the country and its dependencies and colonies, a number of the highest judges and retired judges, a few colonial statesmen *all* present and past cabinet ministers, and a number of persons upon whom the Sovereign (acting on the advice of his ministers) wants to confer its membership as a mark of honour for having achieved distinction in literature, science, art, or in military, or political services rendered to the state A few of our countrymen are or were its members ; *e. g*, Sir Tej Bahadur Sapru, the late Srinivas Sastri and Sir Shadi Lal A person is appointed its member for his life time Once a Privy Councillor always a Privy Councillor : so runs the saying A Privy Councillor is always addressed as The Rt Hon Mr so-and so Except in the case of cabinet ministers all of whom become Privy Councillors *ex-officio*, the rank of Privy Councillor is bestowed as an honorary distinction upon persons to whom no state secret is ever confided and whose opinion is never asked

Though the descendant of the old Curia Regis, and once an important deliberative body, it has no deliberative functions at the present time ; its work is largely of a formal character Except when a new sovereign is to be crowned or some solemn ceremony is to be performed, a meeting of the Council as a whole is never called For transacting business it is customary to invite four or five active members of the cabinet They generally meet at Buckingham Palace and act in the name of the Council as a whole The King is usually present at such meetings which are held about 20 times a year, but his presence is not necessary The Lord President of the Council, who is a member of the cabinet, and the clerk of the Council are always in attendance

Three members constitute the quorum The work of the Council is done in the name of the King in Council

The Council generally meets for transacting the following business: issue of decrees and ordinances generally known as orders-in-council (this term will be explained below); administering the oath of office to the ministers when a new government is formed, appointment of 'sheriffs', grant of charters to universities, municipal boroughs and other bodies; the grant of licenses and the remission of penalties It is in the Council that the newly appointed Bishops do homage to the King, and it is in the Council again that the ministers receive from the King the insignia of office The most important function is, however, the issue of orders in council It is necessary to understand what they are.

As will be shown in the next chapter, the cabinet is the real executive in Great Britain It deliberates and arrives at decisions upon all matters of moment But strange though it may seem, till recently it was not known to the law of the constitution; it existed and carried on its work as a constitutional convention It could not issue executive orders itself If the matter stood in need of parliamentary sanction, the cabinet decision was referred to the House of Commons for ratification and necessary action If it did not require parliamentary approval, it was sent to the King-in Council for action The practice still continues The cabinet decides that such and such an order shall be passed or that the King shall be advised to act in a certain manner It does not issue the order itself or advise the crown, it merely instructs the Privy Council to put the order into effect or take action in the name of the crown And the council embodies the cabinet decision in the shape of an Order in-Council Proclamations, summoning, proroguing, and dissolving Parliament, orders granting charters to municipalities and other local bodies, orders relating to the permanent civil service, orders relating to

government of colonies and dependencies, war time orders concerning matters like neutral trade and blockade, are all cast in the form of Orders in-Council The total number of such orders issued is about 600 a year. It tends to increase In short, we may say that the Privy Council gives legal effect to a large number of cabinet decisions through its decrees and ordinances, called Orders-in Council.

The Privy Council does much of its work through its several committees, the most important of which is the Judicial Committee The Department of Scientific and Industrial Research together with the Department of Geological Survey and the National Physical Laboratory is under its control The Board of Trade and the Board of Education, formerly subject to its authority, have now been separated from it The council also controls important professional bodies, *e. g* the General Medical Council and the Medical Research Council

CHAPTER IV

The Ministry and the Cabinet

The Pivotal Position of the Cabinet — One of the most significant and interesting features of the British constitutional development is the gradual transformation in the character of monarchy. The British Kings have been reduced from the position of *ruling* sovereigns to that of *reigning* monarchs, they have had to exchange royal power for influence. Of all the devices that have helped in this process the most effective and vital is the Cabinet. It is to the Cabinet that the real and controlling power, once exercised by the kings of Great Britain, has now been transferred. Though every act of the State is still done in the name of the Crown, every one knows that the real executive authority is the Cabinet. Little wonder then, that the Cabinet should come to be looked upon as the pivot, round which the whole machinery of government revolves, or—in the language of Ramsay Muir as 'the steering wheel of the ship of the State'. There is no doubt that it is the most important single piece of mechanism in the entire government machine, and the most characteristic of all British political institutions. Gladston once described it as 'the most curious formation in the political world of modern times, not for its dignity, but for its subtlety, its elasticity, and its many sided diversity of power.'

We have traced its origin and development in another connection and need not recapitulate it here.* Our present task is to define it, describe its organization and functions, determine its relation to the king on the one side and to Parliament on the other, and state the principles of its working. Before attempting its definition, it seems advisable to distinguish it from the ministry.

The Ministry.— In its broad meaning, the executive organ of the government in a modern civilised state consists of two parts.

* See *Supra* page 58.

One part consists of the politicians, drawn from the legislature, to whom the Prime Minister entrusts the various offices when he forms a 'new government' Broadly speaking these officials appointed by the Prime Minister are concerned with the formulation of policy and the direction of affairs Together, they constitute the *ministry* The strength of the British ministry is not fixed Before the First World War it contained between 50 to 60 members. During the War its number rose to about 90, and in the post war period its strength was brought down to about 65 The other part of the executive consists of the members of the permanent Civil Service In theory, they are not concerned with the formulation of policy for the direction of affairs, their function is to carry out the orders issued to them by the ministers who are heads of the various administrative departments They are not members of Parliament, in fact, membership of Parliament is incompatible with the holding of office in the Civil Service Their tenure is not affected by the victory or defeat of a political party in the elections or on the floor of the House of Commons In other words, 'their office is not political' Members of a ministry, on the contrary, remain in office only so long as the party to which they belong retains its *parliamentary* majority, an adverse vote in the House of Commons on an *important measure would mean their resignation en bloc*

We may therefore define the Ministry as a group of all those members of Parliament who are appointed to various offices, great or small, by each new Prime Minister when he is commissioned by the King to form a new government, either after a victory in the general election, or on the resignation of the previous government All these persons assume office together and resign office together A majority of them are usually drawn from the House of Commons What distinguishes them from other officials of the crown who constitute the Civil Service is their responsibility to the House of Commons, *i e*, the political nature of their office They have no fixed tenure, holding office

only so long as Parliament keeps the cabinet in office. The resignation of the cabinet means the resignation of the ministry. It may be added that the ministry as such has no collective functions, all its members never meet together for transacting business. Each of them has individual duties and responsibilities. It is only the Cabinet which has collective duties and responsibilities and meets and functions as a whole.

In a modern Ministry we find persons belonging to four or five different categories. In the first place, it contains the heads of all the principal administrative departments, *e. g.*, the First Lord of Admiralty, the Chancellor of the Exchequer, President of the Board of Education, the Secretary of State for India. Secondly it contains persons who are not heads of any governmental department but hold certain high offices, *e. g.*, Lord President of the Council and the Lord Chancellor. Thirdly, it includes all parliamentary secretaries and under-secretaries. It should be remembered that permanent under-secretaries in the various departments do not form part of the ministry, the offices they hold are not political. In the next place, it includes the Government whips in the House of Commons. A few officers of the Royal Household, such as the Treasurer and the Vice-Chamberlain, also form part of the ministry.

From the foregoing it would be evident that not all the members of the ministry are concerned with the formulation of policy or the direction of administration. The junior ministers and Parliamentary under-secretaries, for example, have little to do with the formulation of policy, and the whips have no administrative functions.

The Cabinet.— From the above account of the nature and functions of the Ministry it would be evident that it is not the driving and steering force of the State. It is another and smaller group of persons known as the Cabinet, who form 'The

'government' and direct and control public affairs. The Cabinet and Ministry, though different, are not disconnected, they partly overlap in personnel. All the members of the Cabinet are members of the ministry, but all the members of the ministry are not members of the Cabinet. If we prefer to designate each one of the 60 and odd members of a modern British ministry as a minister, we shall have to distinguish between a minister and a cabinet minister. Any crown official appointed by the Prime Minister from among members of the two Houses of Parliament to a *political* office would be a minister, but he would be a cabinet minister only if he belongs to that inner and select circle whom the Prime Minister habitually consults on all matters of high policy and which, including the Prime Minister, is the supreme ruling body in the State. The members of this inner, select circle are chosen by the Prime Minister. From this point of view the Cabinet may be defined as that group of the most highly influential and important members of the ministry whom the Prime Minister invites to join the select circle. It must not be supposed that the Prime Minister has unfettered discretion in deciding whom to include in the cabinet and whom to exclude from it. There are more than a dozen offices whose incumbents are invariably included in it, *e g*, the Lord President of the Council, Lord Chancellor, Lord Privy Seal, the First Lord of Admiralty, the Chancellor of the Exchequer, the heads of the Foreign Office, the War Office, the Home Office, the Dominions Office, the Colonial Office, the India Office, the Scottish Office, the Ministry for Air, and the Ministers of Health and Labour. The Postmaster General, the President of the Board of Agriculture and Fisheries, the First Commissioner of Works and the Lord Chancellor for Ireland are among those sometimes included and occasionally excluded.

The size of the Cabinet, like that of the ministry, is not fixed; it has shown a tendency towards gradual increase. During the eighteenth century the Cabinet contained from seven

to nine members during most of the nineteenth century it had from twelve to fifteen members and during the decade and half before the war of 1914—18 the number rose to 20. At one time there were as many as 22 members, but 20 may be regarded as the normal figure The number was found to be too large for prompt and decisive action during the First World War, and when Mr Lloyd George became the Prime Minister in 1916, he formed a new War Cabinet of five persons, which was later on strengthened by the inclusion of a sixth person This step was not liked at all, and was tolerated during the pendency of the war In 1919 after the signing of the peace treaty its strength reached the pre war figure of 20, even though Mr Lloyd George wanted to restrict it to 12 Though many British and foreign observers feel that the cabinet has grown too big for effective handling of business, the increase in numbers is not easily avoidable It is necessitated in part, by the increase in the number of departments exercising important functions

Before proceeding to discuss its organization and functions, another point in which the cabinet differs from the ministry may be noted Whereas the ministry has no collective functions and never meets as a body for transacting work, the Cabinet has collective obligations and its members meet together to deliberate and decide upon state policies/ In other words, the cabinet deliberates and arrives at decisions on important questions It, however, does not decree or execute them, it is the function of the Privy Council to decree their execution and of the individual ministers to execute them The ministry neither deliberates, nor decrees, nor executes, It has no corporate existence This is a vital point of difference It means that the Cabinet is the *core* of the British constitutional system and the supreme directing authority within it It keeps together what would otherwise be a heterogeneous collection of authorities performing a variety of functions

Although the privy council, the ministry, and the cabinet are three different entities exercising different functions, it happens

in about twenty cases that membership of the three bodies is combined together in the same person. The Cabinet Minister is also a Privy Councillor and a member of the ministry. As a cabinet minister he deliberates, as a privy councillor he decrees, and as a minister he executes.

Formation of the Cabinet — Within the Cabinet (and within the ministry also) the Prime Minister is the key-man. He is central to its formation because it is he who prepares a list of the ministers and decides what office each shall hold. In a number of cases he decides whether or not a particular minister is to be included in the Cabinet. In the choice of his colleagues and the assignment of places to them he is theoretically free, Parliament does not control his actions in any direct manner, and he may be sure that whatever list he submits to the King will receive his assent which is formally indispensable. In practice, however, he has to work under many restraints and restrictions. It must be remembered that the Prime Minister is the prime minister in virtue of his being the leader of his party, and in all that he does as the Prime Minister he has constantly to bear in mind the party relationship. He must choose certain of his colleagues because the party expects their presence in the government, nay, in some cases, they may be so important as to insist upon getting the office they want. He cannot ignore those who functioned in earlier cabinets and are still in the party, and he cannot also offend the young entrants with a reputation behind them. He has to satisfy the different elements in the party, and so distribute cabinet ministerships as not to exclude any geographical area. He has also to pay attention to public opinion. Furthermore, since the aim of the Prime Minister is not merely to form a team, but to form a team that will satisfy the party leaders and work smoothly, he cannot be guided solely by his personal likes and dislikes, he has to consult his colleagues in the party and accept compromises. Nevertheless, he has ample discretion in the choice of the ministers,

its extent depending upon the amount of personal influence over his followers It may also be pointed out that he has to confine his choice to members of Parliament*, and also to include several members of the House of Lords in the cabinet The Government must have its spokesmen there to explain its policies and defend its decisions The task of forming a ministry, is thus one of much delicacy and great responsibility Fortunate is the person who can accomplish it without incurring personal embarrasment.

At this stage we might digress a little and enquire as to what sort of man becomes a cabinet minister Are there any specific qualifications which the Prime Minister seeks in persons who are invited by him to join his Cabinet? The question does not admit of any categorical answer As has been stated above, the Prime Minister is guided by diverse considerations in the choice of his colleagues One remark may, however, be made. Membership of the Cabinet is the reward of service in Parliament, it comes after a considerably long apprenticeship in politics It is only in the case of persons gifted with certain qualities of character that parliamentary career is crowned with appointment to that highly coveted office Among these qualities we may include gifts of mind, temperament and character. In order to be able to impress himself on his colleagues and win their esteem a person must display intelligence, common sense and judgment, sincerity of purpose and a strong moral character Eloquence would help a person only if he possesses the other traits; without them it would not carry him far Capacity for making a case, ability to retort, and the power to meet an emergency are also very helpful All the members of a cabinet may not be men of

*In special cases however a person may be appointed a minister without having a seat in Parliament But if he does not secure a seat for himself within six months, he will have to make an exit A seat may be provided for him by being made a peer or by arrangement with a member of the party who may be persuaded to resign his seat in the House of Commons thus necessitating a bye-election which the provisional minister may contest

exceptional qualities, but every Cabinet is bound to have a number of such men, or else it would not survive long What is true of a cabinet minister is still more true of the Prime Minister Quite a number of British Prime Ministers have been eminent men

The list of ministers prepared by the Prime Minister has to be approved of by the Sovereign The King has the right to discuss the proposed appointments, he may object to the inclusion of certain names and suggest others in their place Queen Victoria is reported to have prevented the appointment of certain persons to certain posts, *e g.*, she stood in the way of Lord Ripon being made the Secretary of State for India But if the Prime Minister is a strong man and persists in his recommendations, the Sovereign has to withdraw his opposition, and accept the list The opinion of the King is, however, not without weight Any way, the right to discuss ministerial appointments is fundamental, It gives to the Sovereign an opportunity to influence the distribution of offices

The Prime Minister is central not only to the formation of the Cabinet, he is also central to its life Every Cabinet takes its colour and complexion from the personality of the Prime Minister, from what he does and the manner in which he directs its business This point will be elaborated in describing the position and powers of the Prime Minister He is also central to its death His resignation means the resignation of the Cabinet and of the whole ministry Lord Morley's description of the Prime Minister as 'the keystone of Cabinet arch' is quite appropriate

The Prime Minister's Appointment.— Seeing that the Prime Minister is central to the formation and the life of the Cabinet which is the supreme ruling authority in the State, it is desirable to refer to the process by which this most powerful and important official is actually selected Technically it is the

function of the King to choose the Prime Minister There was indeed a period when the King really chose his prime minister; even now an occasion might arise when he might be in a position to make a real choice from among a number of possible candidates Speaking generally, however, it may be said that the King's choice is automatic, it is indicated by the political situation He has to call the recognised leader of the political party returned in a majority to the House of Commons by the electorate, (or the leader of the official opposition, if the new government is the result of a censorious act of the House) In so far as it is the electorate which brings one party into power rather than another, it may be said that the Prime Minister is really the choice of the electorate. In so far as it is the party members in the House of Commons who choose their parliamentary leader, they too have a hand in the selection of the Prime Minister The electorate selects the party by which it wants the country to be governed; the party singles out the man it wants to honour; the King sets the seal of approval on the choice thus made by the country and the party, by commissioning the person thus indicated to form the government It would appear that the Sovereign has not much discretion in the choice of the Prime Minister, he may be said to appoint rather than to choose him in a great majority of cases.

Attention may be drawn to one or two other points connected with the Prime Minister's appointment It has now become an almost regular constitutional convention that he shall belong to the House of Commons It is to that House and not to the House of Lords that the government is responsible; it is there and not in the upper chamber that public opinion is reflected When Bonar Law resigned in 1923, the King's choice lay between Lord Curzon who belonged to the House of Lords, and Mr Baldwin who was the obvious candidate from the House of Commons Of the two, Lord Curzon was the more experienced, but the King was advised to send for Mr Baldwin mainly on the ground that the Labour party which formed the official

Opposition was practically unrepresented in the Upper House Secondly, this should be remembered that the King invites the suggestion of the retiring Prime Minister in regard to his successor The King may also talk to other persons and feel the situation for himself in cases where the political situation does not clearly indicate the new Prime Minister

The Fundamentals of the Cabinet System — For a proper understanding and appreciation of the way in which the Cabinet governs the country some knowledge of the principles on which it works is absolutely necessary Their statement would also help the reader to have a clearer idea of its nature. They are not stated in any order of merit, for on this question a good deal of difference of opinion among scholars is likely.

One of the most vital and fundamental features of the Cabinet is its party character It has several implications It means that (cases of coalition cabinets apart) every member of the Cabinet, nay, of the whole ministry, is normally drawn from the same party Experience shows that smooth working becomes difficult if a Cabinet contains persons holding contrary political views. A Cabinet drawn from a single party works best because it has a unity of purpose It also means that a Cabinet governs the country in the name of the party which provides it with a majority in the House of Commons This is why we say that it is the conservatives or the liberals or the socialists who rule the country It further implies that the Cabinet will try to put into practice and give effect to the party programme placed before the nation at the election time So long as it continues to give effect to the party decisions and policies, it can rely upon the support of its followers and keep itself in power. The moment it tries to go beyond 'the party line', it runs the risk of forfeiting its majority and therefore power itself This is the reason why the Cabinet is sometimes defined as a committee of the party (or

coalition of parties) commanding a majority in the House of Commons, selected by one man to govern the country.

The homogeneity and solidarity of the Cabinet follow from its party character It is obvious that when all the members of a cabinet are drawn from the same political party, they will display great similarity in their political views and conceptions and work together in a team spirit for the realisation of their common aim The true spirit of cabinet system disappears when its members belong to different political camps Coalition cabinets are not true cabinets at all The Indian National Congress may be said to have shown a genuine grasp of the principles of cabinet system of government when it declined to form coalition cabinets in the provinces in 1937

The *solidarity* of the Cabinet does not merely signify that it works like a team It also means that, whatever be the differences among the members themselves on an issue, those differences shall never be revealed to the outside world, to the king, the Commons and the country at large Once a decision is taken after due deliberation and thought, all the members have to stand by it , none can criticise or oppose it on the floor of the House, in the press, or from the platform This is a very vital feature of the system

Closely connected with the *party* character of the Cabinet is the ascendency or leadership of the Prime Minister in it It has been shown already that the Prime Minister is the key man in it ; he is central to its formation, life and death He selects the other ministers and puts them where they are. He exercises general supervision over their work and co-ordinates their activities. He counsels with individual ministers, encouraging, advising and admonishing them whenever necessary If there arise differences between them, he tries to settle them If a minister refuses to carry out his instructions, he can demand his resignation, or secure his dismissal by the Crown If a number of cabinet

ministers differ from him on an important issue, he may demand the acceptance of his views by them, or as an alternative, his resignation or theirs He controls the agenda of the cabinet He is the sole channel of communication between the Cabinet and the King As has been stated in another context he threshes out with the King important matters before they are discussed by the Cabinet and communicates to him the decisions arrived at by it He is the spokesman of the Cabinet on all important matters ; Parliament and the nation look to him for authoritative pronouncements and statements of government policy He is expected to speak on the more important bills and measures before Parliament and bear the brunt of debate on behalf of the government Because of all these and other powers and functions, he dominates his cabinet In view of his central and key position it is wrong to describe him as *primus inter pares*, as first among equals in relation to the other members of the Cabinet They cannot in any valid meaning of the term be regarded as his equals He is the working head of the State, and enjoys a national standing which no other member of the Cabinet can approach, much less equal

Nevertheless, the British Prime Minister is not the master of the Cabinet in the sense in which the American President is the master of his cabinet His position cannot approximate to that of the American President in relation to his cabinet Though he selects the cabinet ministers and puts them where they are, the latter are not his servants, they are not responsible to him but to Parliament He cannot deal with them in an autocratic manner, but has to take them along with himself It can be said that about half of them are there in the Cabinet not because of the Prime Minister's generosity and favour, they hold their position in virtue of their status in the party The same cannot be maintained in regard to the American Secretaries of State. There is a second reason also for the comparatively weaker position of the British Prime Minister *vis-a-vis* his Cabinet His 'authority is a

matter of influence in the context of party structure and not of defined powers legally conferred "* He is thus not in a position to coerce his colleagues, but has to persuade them to fall in with his views Something more will be said about the powers of the Prime Minister at another place.

It is interesting to note that the Cabinet system has worked in quite a different manner and produced different results in France because there the Prime Minister does not lead the Cabinet *in the same way as in Great Britain and the Cabinets are not* homogeneous

Ministerial Responsibility is the third salient feature of the cabinet system This responsibility is of two, or even three, types, which may be called legal, political, and intra-cabinet By *legal* responsibility is meant the fact that the minister who countersigns the executive decree or order issued in the name of the Crown is responsible for it, and can be sued in a court of law for consequences flowing from it if it can be shown to be illegal *Political* responsibility, which may be regarded as Britain's chief contribution to the art and science of government, is entirely different from it It means that every minister, whether included in the Cabinet or not, is accountable for all his public acts before the House of Commons This accountability is as important a condition of good government as the integrity and efficiency of ministers It signifies nothing more than that if the popular branch of legislature censures any public act of a minister he has to resign A minister is allowed to administer the affairs of the state only so long as he can get the approval of Parliament for his acts and policies The moment he forfeits this confidence, he has to make an exit There are several ways in which the legislature may manifest its disapproval of the minister's policies It may pass a simple motion of no confidence in him, criticise and censure some particular action of his, refuse

* Laski *Parliamentary Government in England* page 341

to pass a bill sponsored by him or change it in a way not acceptable to him. In short, political responsibility means that a displeased House of Commons can force a minister or the whole cabinet out of office. Intra-cabinet responsibility, also known as *collective* responsibility. It is as integral a feature of the cabinet system as political responsibility. It means that each member of the cabinet is responsible for the decisions of the cabinet as a whole and is bound by them. 'For all that passes in the Cabinet, each member of it who does not resign is absolutely and irretrievably responsible, and has no right afterwards to say that he agreed in one case to a compromise, while, in another he was persuaded by his colleagues.' Thus said Lord Salisbury in 1878. The cabinet functions as a unit; it is a unit as regards the King, and a unit as regards Parliament and the country. It gives advice to the Sovereign as a whole and places its views before Parliament as a whole. No member of the Cabinet is permitted openly to criticise or oppose any of its decisions. If he differs from it, the only alternative for him is to resign. A vote of censure against one minister is a vote of censure against the Cabinet as a whole. All of them sink or swim together. The principle of Cabinet system is 'Each for all and all for each.' There are, however, instances in which the Cabinet disowned responsibility for the action of a minister and threw him overboard, e. g., the resignation of Sir Samuel Hoare as Foreign Secretary because of the parliamentary disapproval of his pact with Laval in regard to Abyssinia.

This principle of ministerial responsibility, particularly of political and collective responsibility, is one of the most important contributions of Great Britain to the art and science of government and constitutes the essence of the British system. It is, however, not a matter of constitutional law as it is in France and other countries, it is grounded wholly on usage or convention. It may also be pointed out that collective responsibility is ultimately rooted in the party character of the Cabinet. It is indispensable for the smooth and proper working

of the cabinet system in so far as it begets mutual confidence and that 'give and take' in the shaping of policy without which unanimity of decision is impossible

Closely connected with the doctrine of collective responsibility of the Cabinet is the fact of its being a *secret* committee The Cabinet conducts its deliberations in private and throws a veil of secrecy over them Every cabinet minister has to take an oath before the Privy Council that he would not disclose cabinet secrets to any one There is also the Official Secrets Act to bind him But perhaps the rule is observed more because of its practical utility For its efficient working the cabinet system demands that the differences between its members shall not be made public If the Cabinet is to present a united front to the King on the one side, and to Parliament on the other, and if, above all, its collective responsibility is to be maintained, it is absolutely necessary that what transpires behind the scene should not be made public If every statement made by a minister were to become public, there could be no free discussion The rule of secrecy is, however, not absolute When a minister resigns because of a serious difference of opinion with his colleagues or the Prime Minister, and desires to offer explanation on the floor of the House, some cabinet secrets are generally made public. When cabinet proceedings pass into history, the rule is waived

The observance of the rule forbids the members to take down notes of cabinet proceedings. It is only the Prime Minister, and now the official Secretary of the Cabinet also, who are authorised to prepare notes. The Prime Minister may give to the Press an official summary of important cabinet decisions Attention may also be drawn to another feature of the system The Cabinet is not something separate from the legislature but may be regarded as 'an integral and living part' of it It is the British Parliament which gives life to the British Cabinet, withdrawal of

its support would mean the resignation of the latter. This constitutes the fundamental difference between the British and the American systems

We may sum up the preceding discussion and state that the following are the main characteristics of the Cabinet system as it operates in Great Britain —leadership of the Prime Minister; the party character of the Cabinet and its homogeneity, solidarity and unity, its collective responsibility and accountability before the House of Commons, and lastly the secrecy of its proceedings. All these features are not found in France and other countries which have adopted it because the peculiar conditions prevailing in the country of its birth are not found there

Functions of the Cabinet.— It is not easy to state the functions of the Cabinet in a succinct form, they are as numerous and varied as the functions performed by the government of a country can be It is the supreme executive of the nation, it directs and frames national policy and sees to it that effect is given to it by the various administrative departments of the government One may say with Laski that its real function 'is to govern the country in the name of the party or parties which provide it with a majority in the House of Commons.'*

According to the Report of the Machinery of Government Committee, the Cabinet has three main functions. They are (i) the final determination of the policy to be submitted to Parliament, (ii) the supreme control of the national executive in accordance with the policy prescribed by Parliament, and (iii) the continuous co-ordination and delimitation of the authorities of the several Departments of State These, however, do not exhaust all the functions of the Cabinet in Great Britain There are other functions also of an equally important nature

* Laski *op cit*, page 111

which it has begun to perform Ramsay Muir draws attention to the following (i) The Cabinet is responsible for all legislation, and for the detailed preparation of practically all legislative measures submitted to Parliament Indeed, so vital is the role played by it in legislation that it would not be wrong to say that to-day it is the Cabinet which legislates with the consent of Parliament (ii) It is also practically responsible for determining what revenues will be raised and in what manner, and how they will be spent The budget is always brought before the Cabinet and discussed by it before being presented to Parliament (iii) It decide within fairly wide limits the business to be submitted to Parliament and the amount of time to be allotted to the consideration of the various measures (iv) Lastly, the Cabinet makes appointments to practically all the great offices of the state in Great Britain and outside *

The first three functions call for no comment. They belong to the Cabinet in virtue of its being the supreme policy-formulating organ and the general controlling body in the State It determines the lines of national policy and decides how the various national problems are to be dealt with When it has determined the policy and arrived at the solution of each current problem, it submits it to Parliament if it stands in need of its approval, otherwise it is entrusted to an appropriate department for necessary action It ought to be remembered that the Cabinet itself does not administer the affairs of the State or execute any policy This is the work of the various departments over which its various members preside. All that the Cabinet does as a corporate body is to determine policy and co-ordinate the work of the different departments. Besides the Cabinet there is no other agency to discharge this very important function It does not deal with the details of the working of any department and leaves it to the minister to decide questions which have no political importance In deciding what matters arising in his

* Jennings holds that appointments are regarded as provisional subject to Parliament's approval.

department are to be referred to the Cabinet the minister exercises his discretion The Cabinet generally meets once a week for transacting business when Parliament is in session Extra meetings may be held at any time of the day or night, even on very short notice.

Whereas the work of policy formulation and supervision of the work of the various departments is performed by the Cabinet in every country, the way in which it has come to guide and control the work of Parliament in Great Britain is unmatched in other European countries which have adopted the Cabinet system of government The Cabinet sets forth the programme of legislation at the opening of every parliamentary session, its members introduce, explain and pilot through the House of Commons legislative measures upon all kinds of subjects For weeks on end the Cabinet monopolises the time of the House of Commons for considering the measures in which it is interested As will be pointed out in another connection it practically controls the financial policies of the state It is on account of the manner in which the Cabinet exercises control over the House of Commons that Ramsay Muir talks about its omnipotency or dictatorship

Bagehot's famous description of the Cabinet as the 'hyphen that joins, the buckle that binds, the executive and legislative departments together', draws attention to another highly important and vital aspect of its activities The Cabinet stands between the Sovereign and Parliament, and not only brings the executive and the legislative organs into a close and intimate contact to which there is no parallel in the Presidential system of government, but also provides parliament with leadership It ensures that the functions of government are exercised by a body of persons whose views are in harmony with the views of the majority in the popular chamber and makes them accountable to the nation's representatives; in the words of Laski 'it pushes a stream of

tendency through affairs by obtaining for its course the approval of the sovereign organ of the State'

Cabinet Meetings and Committees — The meetings of the Cabinet are generally held at 10, Downing Street, the official residence of the Prime Minister, with the Prime Minister in chair There are no rules of order and no fixed quorum, and discussion tends to become rather informal and conversational in nature Except when there are fundamental differences, decisions are not sought to be arrived at on the basis of majority vote. Efforts are made to secure almost unanimous agreement through mutual give and take. As a writer puts it, compromise is the first and last order of the day The Cabinet ministers thus talk round the subject until some compromise suggests itself

Like other bodies, the Cabinet also has found it necessary to make use of Committees There is, however, no regular and fixed committee system, special committees are set up as occasion arises Two committees, namely, on home affairs and finance, are permanent Mention may also be made of the Committee of Imperial Defence, which is technically not a committee of the Cabinet but functions as such It is presided over by the Prime Minister Dominion representatives are also sometimes invited to attend it

Reference may also be made to the fact that until 1917 no official records of Cabinet proceedings and decisions were kept No member except the Prime Minister could take any notes of the proceedings, and he, too, for the purpose of informing the King or his own guidance It was during the First World War that Mr Lloyd George broke the tradition and appointed a Secretary to the Cabinet to keep a record of its decisions The practice was found to be useful, and now a regular Secretariat exists Attention may also be drawn to a new phenomenon, the growth of what is generally called the "Inner Cabinet". Several causes

have led to this interesting development The increase in the size of the Cabinet is partly responsible for it, the necessity of expediting business in some Department also leads the Minister to consult the Prime Minister and arrive at decision without referring the matter to the Cabinet even though the matter may be important The most important cause is, however, to be found in the fact that every cabinet generally contains four or five persons of outstanding ability, experience and personality whom the *Prime Minister generally consults on important matters* They constitute the inner council which gives direction to the policy of the ministry as a whole The War Cabinets formed during the two World Wars were something like the Inner Cabinet for the conduct of the war.

Powers and Functions of the Prime Minister — From an account of the nature and functions of the Cabinet which is the pivot round which the whole machinery of government revolves, we now come back to the Prime Minister whom Gladstone once described as the 'key-stone in the Cabinet arch'. He is something more than this, he is, in fact, though not in law, the political ruler of England, the head of the administration in the state. Even though his powers have not been legally defined anywhere, he is 'endued with such a plenitude of power as no other constitutional ruler in the world possesses, not even the President of the United States For, so long as his party commands a majority in the *House of Commons*, he can do what no President can ever do— he can give a pledge beforehand that such and such a treaty will be signed and ratified, that such and such a law will be passed, or that such and such moneys will be voted by Parliament "*

We have noted already the powers he exercises as the leader of the Cabinet With the King's consent he appoints and dismisses ministers, and assigns portfolios to them He settles differences between departments and irons out the difficulties

* Ramsay Muir, *How Britain is Governed*, page 83.

arising between ministers He is constantly consulted by ministers on the major problems of their departments and can claim to be thus consulted He has a decisive voice in all important crown appointments, *e g*, the Governor General of India, the governors of colonies, and thus has a wide patronage, he keeps an eye on all departments and is responsible for seeing that they carry out Cabinet decisions He is the channel of communication between the Cabinet and the King, and is in direct communication with the Prime Ministers of the Dominions He sets up bodies like the Committee of Imperial Defence and Economic Advisory Council and presides over the meetings of the former and at Imperial Conferences He sometimes receives foreign ambassadors and sometimes represents the British Government at International Conferences He is the leader of the House of Commons and is expected to speak on behalf of the Government on all important measures and problems He answers questions on general policy in the House of Commons He has a large share in making foreign policy also He is the leader of his party and in that capacity controls the central party machine and takes prominent part in political propaganda

It would be easier to remember and understand the many-sided powers of the Prime Minister if we bear in mind that he is (*i*) the key stone in the Cabinet arch, central to the formation, life and death of that supreme controlling authority, (*ii*) the leader of the House of Commons, (*iii*) the confidential advisor of the Crown in a special degree and the link between the King and the Cabinet, and (*iv*) the indirect nominee of the electorate He occupies the key position in the British constitution, and may well be regarded as the sun round which the various planets of the constitutional system revolve Recent developments have generally tended to increase his authority. But two things must be remembered in this connection Firstly, the office of the Prime Minister is what the holder chooses to make it and

what the other ministers allow him to make of it"* In other words, his powers and authority to a large extent depend upon his own personality and prestige and his relations with his colleagues. Dominating personalities like Disraeli, Gladstone, Peel and Churchill make strong prime ministers whose authority can be challenged by few colleagues. Secondly, as has been pointed out already, his powers can be exercised only in the context of party structure. It is the leadership of the party which has a majority in the House of Commons that gives him the power and authority he possesses. If the party loses its majority or revolts against his leadership, all his authority melts away. This implies that great as his powers are, he has to secure the collaboration of his colleagues in their exercise. He cannot afford to act like an autocrat. In this respect he compares unfavourably with the President of the United States.

Finally, we may note a characteristically British anomaly. Inspite of their being the real controlling factors in the British constitutional machine, neither the Prime Minister nor the Cabinet was known to the law of the constitution till recently. In its eyes the Cabinet was an unofficial and informal assembly of a number of the ministers of the Crown whose decisions had no legal effect until they obtained parliamentary approval or were endorsed by the Privy Council. The Prime Minister did not draw salary as Prime Minister but as the First Lord of the Treasury or in some other capacity, he had no statutory duties as Prime Minister, and his name did not occur in Acts of Parliament. His position in the table of social precedence was not recognised till 1905. The captain of a guardship wanted to show honour to the Prime Minister by a salute of guns when he visited Clyde in 1863. But the naval code did not recognise the Prime Minister. The captain found a way out of the difficulty by

* (Jennings: *The British Constitution* page 15)

honouring him as the Lord Warden of the Cinque Ports Truly did Gladstone remark that nowhere in the wide world 'does so great a substance cast so small a shadow; nowhere is there a man who has so much power, with so little to show for it in the way of formal title or prerogative' The Ministers of the Crown Act of 1937 alters the situation to a certain extent

The Crown and the Cabinet.— It has been pointed out already that in the parliamentary system such as prevails in Great Britain, the formal executive must be distinguished from the real The Crown is the formal executive; it finds its visible embodiment in the reigning monarch The Cabinet is the real or political executive, it really governs the country We have described the powers and functions of the Crown and also those of the Cabinet in the preceding pages, it now remains to determine the relationship between them

It is a fundamental principle of the British constitution that the King can do no right or wrong The responsibility for all the public acts done in the name of the Crown is of the ministers and not of the King This means that it is the Cabinet which formulates the policy and arrives at decisions on each current problem, and the King has to submit to that policy and the decisions. It is of course true that the King may try to persuade his ministers to abandon a policy which he does not approve of, but if the ministers stand their ground and refuse to accept the royal advice, the King must yield In other words, the King is constitutionally bound to act on the advice of his ministers Nevertheless, a wise and industrious monarch can wield considerable influence in the determination of state policies. He is in constant touch with the Prime Minister and is kept informed by him about the vital aspects of policy He can see other ministers also, and has other sources of information He has the right to see important despatches in all departments and to comment upon them He can demand that no new policy

should be adopted in any department without first informing him about it and that the questions to be discussed by the Cabinet be sent to him before any decisions are taken He has a right to comment on them and to demand that his opinions be placed before the Cabinet before decision is taken He can raise a question which, in his opinion, should be submitted to the Cabinet In these ways he can exert some influence on the course of events The efficacy of this influence depends partly on the character of royal criticisms and proposals, and partly on the degree to which they are in harmony with the political philosophy and policy of the party in power In the light of documents which have been published it can be said that British monarchs are far from being negligible factors in the determination of state policies As has been stated previously, the exalted position of the King, his long experience and knowledge of men and things combined with his apparently non partisan character give his advice a weight that cannot be lightly disregarded The power of the King in relation to the Cabinet is quite real

The Cabinet and Parliament — The Cabinet stands in a very close relation not only to the Crown, but also to Parliament Its relationship to Parliament supplies an extremely interesting example of the wide divergence between theory and practice which is one of the most distinctive features of the British constitutional system According to the legal theory of parliamentary government Parliament, which in practice means the House of Commons, is supreme For everything which the ministers do, for every advice which they give to the Crown, individually as well as collectively, they are accountable to the House of Commons The Cabinet governs the country, but subject to the control and supervision of Parliament It cannot raise a penny by way of taxes, and it cannot spend a single farthing on any item without the explicit consent and approval of Parliament It cannot declare war or make peace without parliamentary approval The very life of the Cabinet depends upon the will

of the House of Commons. A displeased or censorious House can dismiss a ministry No Cabinet can remain in office if the House censures it or refuses to pass a measure considered important by it The Cabinet can govern the country only so long as the House of Commons continues to give approval to its acts and policies Nothing more is needed to demonstrate the supreme and authoritative position of Parliament. Those who, like Gladstone, find in the House of Commons 'the solar orb round which the other bodies revolve' are, in legal theory, on very sound ground

In actual practice, however, the things are the other way about Instead of being its obedient servant, yielding to its slightest wishes, the Cabinet has become the master of the House of Commons and controls it to an extent unknown in any European country having the same type of government The growing dominance of the Cabinet over the House of Commons is perhaps the most remarkable single constitutional development in Great Britain during the last sixty years or so It is no longer the House of Commons which makes or unmakes the ministries; no Cabinet has been thrown out of the office by it during the last sixty or seventy years A government possessing a real majority in it can be reasonably certain of maintaining itself in power so long as Parliament endures. It is the electorate rather than their elected representatives in Parliament who decide whether the Labour party or the Conservative party is to be entrusted with the responsibility of administering the affairs of the State Again it is the electorate and not Parliament to whom the Cabinet looks for approval of its policies Parliament has become a rubber stamp to register the decision of the electorate.

One important consequence of this decreasing control of Parliament over the Cabinet and the increasing powers of the latter is that the ministers take their cue from what appears to be public opinion to them and ignore or take lightly the

criticisms made by the members on the floor of the house Rebuffs which might have caused a political sensation in the past are now taken lightly

In yet other ways the House of Commons has lost ground to the Cabinet. The role played by the latter in legislation has become so vital and important that a writer was led to remark that to-day it is the Cabinet which legislates with the approval of the House of Commons There is hardly any exaggeration in this statement The Cabinet has assumed entire control over legislation Every important bill introduced in Parliament comes with the imprimatur of the Cabinet and is usually fully discussed by it before being introduced No measure to which the Cabinet is opposed can be successfully piloted through the House of Commons The same is the case in the sphere of finance where the control of the Cabinet has become almost complete. As will be shown later on, Parliament has no power to propose any new item of expenditure or increase the amount demanded by the government, it cannot propose any new tax or add to the amount proposed by the government Though theoretically it remains true that the government cannot spend a penny without parliamentary approval as a matter of fact the control of the House of Commons over expenditure has been reduced to almost zero point and millions of pounds are voted by it without any discussion. In the matter of voting on taxes the House can exercise control to the extent permitted by the Cabinet Similarly, the control of Parliament over administration has become ineffective These points will be elaborated in another chapter What has been said is sufficient to show that the House of Commons is no longer the master of the Cabinet but has become its servant The causes of this remarkable phenomenon will be discussed elsewhere

CHAPTER V

The Permanent Executive

The Civil Service and Administrative Departments

Introductory.— The supreme executive, even though it may consist of men of extraordinary ability and knowledge, cannot carry on the administration without the help and co operation of an army of trained and experienced civil servants. A country's administration is run, not by the members of its Cabinet, but by a number of Departments manned by members of the Civil Service. In Great Britain the day-to-day enforcement of the country's laws is directed by the great administrative departments like the Treasury, the Home Office, the Foreign Office, the Boards of Trade, Agriculture and Education. A few words about the British Civil Service and the Departments would form a useful supplement to the account of the formal and the political executive as contained in the two preceding chapters.

Main features of the British Administrative System.— Before proceeding with an account of the Civil Service and the enumeration of the main departments it seems desirable to refer to some of the distinctive features of the British administrative system It has become almost customary to contrast the great heterogeneity which characterises the British departments with the great uniformity which is an important feature of the American and the French systems In the United States of America the ten regular executive departments stand on a common footing , they were created by Acts of Congress, though at different times, and are presided over by a single chief known as the Secretary (except in two cases, the Post Office Department and the Department of Justice) They also stand in the same relation to the President and to Congress. The British Departments presided over by members of the Cabinet, on the other

hand, show no uniformity ; they are called by different names and *were created in different ways, and do not stand on a common* footing The presiding officers of some are known as Secretaries of State, of others as Ministers Some departments are organised on the Board basis, *e. g*, the Board of Trade Some of them are survivals of offices which functioned in times gone by, *e g*, the Treasury ; some have sprung from committees of the Privy Council, *e g* the Board of Education, and some have been created by the Acts of Parliament The English Departments are thus extremely heterogeneous ; it is impossible to give a general description that shall apply to all of them They also do not stand on the same footing, the Treasury exercises a measure of *control over the other departments Again, the departments differ* in their status, the political chiefs of some are always members of the Cabinet, those of others, usually not The Treasury, the War Office, the Admiralty, and the India Office are examples of the former; the Department of Pensions and Law Officers (Solicitor *General and Attorney General) illustrate the latter*

This absence of uniformity and equality is, however, not the most significant or fundamental feature of the British system; it *entails no important consequences in the theory or practice* of government. Far more vital is the association of the layman and the expert, of the political or parliamentary chief and the permanent officials. According to President Lowell one of the most deserving of political traditions in England is that which *governs the relation between the expert and the layman. It is* necessary to understand what this means

In every department there is a political chief or head assisted by a political under-secretary The two constitute the lay or amateur element in it They form part of the ministry* Besides them there are two or three (sometimes even more than three) *permanent* under-secretaries, a larger or smaller number of

*Cf pages 51—4 above

secretaries, counsellors, chiefs and assistants, legal advisers and a host of clerks. They are experts and belong to the permanent Civil Service. The two parts have different functions to perform. The minister lays down the policy of the government and determines its objects—in consultation with the Cabinet whenever important issues are involved. It is the business of the permanent under secretaries, chiefs and assistants and other senior civil servants in the department to give expert advice as to the best way of giving effect to the policy and achieving the objects of the government. According to strict theory it is no concern of theirs to formulate the policy or anywise control it; their business is to translate into action whatever policy is decided upon by the political head.* They also supply to their chief much knowledge and experience in the absence of which an intelligent formulation of policies and enactment of legislation by the cabinet and Parliament would be almost impossible. The permanent Civil Service thus makes government *efficient*. The presence of the political head responsible to Parliament serves to make it democratic. The essence of the British scheme is to make administration at once efficient and democratic or popular.

The Royal Commission on the Civil Service sums up the principle of the relation between the Civil Service and the ministers thus:

Determination of policy is the function of the ministers, and once a policy is determined it is the unquestioned and unquestionable business of the civil servant to strive to carry out that policy with precisely the same good will whether he agrees with it or not. That is axiomatic and will never be in dispute. At the same time it is the traditional duty of civil servants, while decisions are being formulated, to make available to their political

*They however contribute to policy framing indirectly. According to Ramsay Muir growth in the powers of the bureaucracy is one of the most outstanding phenomena in British political life. See below pages 88-89.

chiefs all the information and experience at their disposal, and to do this without fear or favour, irrespective of whether this advice may accord or not with the minister's initial view The presentation to the minister of relevant facts, the ascertainment and marshalling of which may often call into play the whole organisation of the department, demands of the civil servant the greatest care The presentation of inferences from the facts equally demands from him all the wisdom and all the detachment he can command The civil servant influences policy by advising the minister and putting before him his own views

It is easy enough to see how the Civil Service supplies the element of expert knowledge and trained experience Entrance to it is regulated by competitive examinations which attract the best products of the British Universities Promotion is determined by seniority and merit, a really intelligent and hard working individual can easily work his way up to the highest office, the permanent under-secretaryship Long years of service and experience in the same department make him an expert, his opinions and suggestions command consideration by the minister who more often than not is new to the department But what is meant by calling the political chief of the department an amateur or layman? He is an amateur in the sense that his appointment as the head is not based on any technical qualifications or special knowledge pertaining to the department, it is determined by considerations which generally have little bearing upon the nature of the special work he would be called upon to do in his particular department Naval experience is not a requisite qualification for appointment as the First Lord of the Admiralty; on the other hand, it would be a disqualification. One does not look to experience as a farmer in the Minister of Agriculture; the Minister for Industry may be a lawyer; and the War Minister a man of peace All this is due to the fact that according to a well known saying *it is not the business of a*

Cabinet Minister to work his department, his business is to see that it is properly worked This he does by framing the general policies (under the control of the Cabinet) and seeing that they are carried out by the permanent staff employed in his department. It is also his business to see that the latter do not do anything which the public would not stand, that the administration of the department does not run counter to public opinion What is thus required of a minister is not knowledge of details or technical skill but a broad vision and sympathetic outlook, which may enable *him* to see *the* department as a whole and appreciate its relationship to other departments and to public opinion He must possess general knowledge, tact and a sense of values, and should be able to win the loyalty and obedience of those who work under him He should be a man of sound common-sense and intelligence. 'His first quality is common sense; his second the art of judging men. He must know how to give orders, and to see that they are obeyed'*

The Civil Service — As has been pointed out above, the permanent civil service plays a vital role in administration It provides the indispensable machinery by which effect is given to the policies of the government and the laws of the land are enforced Without it government would be a mere collection of rules and regulations without any effect upon the people It also collects relevant facts and information on which the minister bases his decisions and policies It is thus the hands, the eyes and ears of the government A sound and efficient civil service is as necessary for realising the purposes for which government exists as an intelligent and patriotic policy-framing supreme executive

But if the civil service is to play its part well, it must attract and be manned by right sort of persons— men of ability, intelligence and character Admission to it must be on merit;

* Laski *op cit* page 552.

jobbery, favouritism and nepotism must not be allowed to influence the selection of candidates Entrants to it must be guaranteed security of tenure This in turn necessitates that the members must be non partisan ; they must stay away from politics and be loyal to whatever party is in power and render equally good service These requirements have not always been fulfilled in Great Britain In the 18th century a large proportion of civil service posts were filled with the relatives, dependents and friends of ministers Public work was entrusted to incompetent hands and a change of government was sometimes followed by a re-staffing of the various departments But to-day it is all changed Persons enter the different grades of the Civil Service through competitive tests, and once there, continue in it all their lives Promotions take place in accordance with seniority and merit Members of the permanent services are not allowed to stand at any election or to take active and open part in political activities or discussions. This is insisted upon with a view to the maintenance of their non partisan attitude It has become a tradition in Great Britain that the permanent Civil Service would serve the Labour Government as efficiently and willingly as the Conservative or Liberal Government A change of government does not affect the fortunes of its members, their service is *non-political* Aloofness from politics is one of the conditions of permanent tenure in the country. It is not necessary to trace the steps through which the present condition has been reached.

The Role of the Civil Service.— The theory of the relationship between the political chief of a department and the permanent civil servants as sketched above does not correctly and adequately describe the actual role played by the professional administrator in the British system It is no doubt true that so long as the permanent staff employed in a department carry out the work assigned to them by the minister, they cannot be publicly criticised for its effects ; censure and praise for the work

done are the lot of the politician and not that of the professional administrator. But from this it would be wrong to conclude that the latter does not influence government policy. As a matter of fact, the civil service wields great power not only in administration but also in legislation and finance, though, on account of the theory of ministerial responsibility, it does not receive public recognition. In so far as the exercise of this power is not sufficiently controlled either by the Cabinet or by Parliament, an element of *bureaucratic* government may be said to enter the British system. It is interesting to see how the phenomenon has come to pass.

On account of its security of tenure and the method of recruitment by competitive examination, the British Civil Service attracts the best and the ablest products of the British Universities, and power always goes to ability. The minister owes his position to his achievements in the general field of politics; he is not put in charge of a department because of any special knowledge of its working or problems. The permanent secretaries, under-secretaries, legal advisers, chief and assistants working under him possess a far deeper knowledge of the immense and complex work of the department than he has. The minister is very well aware of this fact, it makes it difficult for him to override their opinions and the arguments by which they are supported, unless he be a man of exceptional grasp, ability and courage or a self-conceited fool. The consequence is that in a great majority of cases the minister accepts the views of his official subordinates and signs his name on the dotted line. "On the whole the policy of "the Office" will nearly always prevail. Its powers of quiet persistence and of quiet obstruction, and its command of all facts, are irresistible except to a man of commanding power."* The generous intentions of many a well meaning minister are foiled and set at naught by "officialdom". India Office, the Foreign Office, and the War Office can easily provide illustrations.

* Ramsay Muir: *How Britain is Governed* page 26

It does not mean that the influence of the permanent officials is always negative in character, taking the form of denying or modifying new proposals; there are many examples of positive activity. The reports of factory inspectors appointed by the Central Government contained valuable information which supplied the foundation of improved factory legislation. What is necessary to understand is the fact that 'over the field of central administration taken as a whole, the continuous and persistent influence of the permanent Civil Service is the dominating fact'.*

The influence of the Civil Service extends to the sphere of legislation also. Legislative measures introduced in Parliament by the Government may be divided into two classes. Some of the measures are designed to give effect to the pledges given to the electorate during election time. The initiative for such legislation and the ideas for it come from the Government. The role of the Civil Service is confined to putting the ideas in the form of a draft bill, and in this process it can, sometimes introduce subtle changes. To the other class belong the numerous measures introduced by the Government but suggested by the permanent officials, these may affect the life of the people more than the other measures. Though the credit for passing them goes to the Government, the real responsibility for them lies with the permanent officials. There is also another form of legislation which is almost wholly due to the permanent officials. It is known as 'Administrative Legislation', and has grown in volume in recent years. Quite a large number of Public Acts passed by Parliament contain a clause empowering the minister to issue Orders having the force of law. The Orders are in fact issued by the Permanent Officials. Sometimes they 'lie on the table', and occasionally they are put into force at once. Even when they 'lie on the table', Parliament seldom discusses them, their submission to it is nominal. Agriculture, industry, poor relief, public health and education are the broad fields where

* *Ibid*, page 58

this rule making power is largely used. If all the Orders, Rules and Regulations passed during the last twenty years are collected together, they would fill several large volumes. In one case, the Minister was even given the power to do anything which appeared necessary to him for the given purpose, even if the Order issued by him had the effect of *modifying* the provisions of the Act

In the sphere of finance also the same phenomenon appears Chancellors of the Exchequer have oftentimes found it impossible to give effect to their general policy of retrenchment on account of the pressure of the Permanent Officials / The Labour Party was pledged to drastic cut in the expenditure on the fighting forces when it formed the Government in 1924. Instead of effecting any retrenchment, it actually increased the expenditure by several millions of pounds. The Treasury has sometimes converted unorthodox Chancellors of Exchequers into exponents of the traditional principles. The instance of Philip Snowden is a case in point

It will be thus obvious that the Civil Service has become a really operative part of the government mechanism in Great Britain Its role cannot be limited to merely giving effect to the policies decided upon by the Minister outside its cadre It has been able to gather a good deal of authority Its authority is, however, that of influence and not of power / It exercises influence because it alone provides knowledge of facts and consequences on which sound decisions can be based This does not mean that England has developed a bureaucratic government like the one which existed and still exists in our country. We need not discuss whether the increase in the power of the Civil Service is desirable or dangerous ; it is the outcome of certain changes that have come over Great Britain

Administrative Departments.— It does not fall within the scope of this volume to describe the organisation and working

of all or even the more important departments through which the British Government perform the diverse functions normally discharged by civilized governments It is not even necessary to name all of them What we propose doing is simply to classify the various activities of the Government and name the departments through which they are conducted

Maintenance of law and order, conduct of relations with foreign states, defence of the country, and collection of taxes and distribution of money among the various departments are activities which every government must perform. We may call them *political* activities and the departments engaged in them *political* departments In Great Britain they are the Home Office, the Foreign Office, the Admiralty, the War Office, the Air Ministry, and the Treasury The Dominion Office, the Colonial Office and the India Office may also be regarded as *political*. Although the Treasury has been classed above as a political office, it stands apart from the rest and can be left out of the classification because it surveys and in a sense controls the activities of all the other departments Mention may also be made of the Ministry of Pensions which was created in 1916 This department deals with military and naval pensions only, old age pensions and civil service pensions are dealt with by different authorities.

No government these days can possibly confine its activities to the political functions enumerated above, the days of *laissez faire* are over. Even though England retains capitalism and believes in private enterprise, the British Government have found it necessary to regulate and in some cases to control the economic activities of the society Hence there have arisen departments which may be called *economic* The chief of them are the Board of Trade, the Ministry of Transport (set up in 1919), the Ministry of Agriculture and Fisheries, and the Ministry of Labour (created in 1914) The Post Office may also be included in the list

Circumstances similar to those which led to an expansion of state activities from the political to the economic sphere were responsible for a further enlargement of government functions The evils inherent in capitalism, the growing concern of the State for the welfare of its citizens, and increasing knowledge, induced the British Government to introduce what may be called *social services* They now absorb a large part of the energies of Government and several departments dealing with them have come into being The Ministry of Health and the Board of Education are the most important of them with the Ministry of Labour forming as if it were a link between them and the economic departments The original function of the Ministry of Labour was to preserve good relations between employers and employed, but now it devotes a good portion of its time and energies to the social duty of providing work for the unemployed The Ministry of Health was created in 1919 It also deals with Health Insurance and Old Age Pensions The Board of Education was set up in 1899 The realisation of the truth that free government needs intelligent citizens is likely to raise the importance and significance of this department

Before concluding this short review of the principal administrative departments it seems desirable to call attention to a few other offices the political heads of which are invariably members of the Cabinet They are (i) the Chancellor of the Duchy of Lancaster (he is included in the Cabinet for personal and not for administrative reasons), (ii) the Lord Chancellor (he presides over the House of Lords and is the Head of the Judiciary), (iii) the Lord Privy Seal, and (iv) the Lord President of the Council, who is the official head of the Privy Council and once exercised many important functions These offices are neither political, nor economic and social

CHAPTER VI

The Legislature : The House of Commons

Introductory.— We now turn to a study of the second great branch of the British Government, namely, the legislature The British legislature is the oldest in the world , it is also the largest and the most powerful Its antiquity is aptly suggested by the famous description of the British Parliament as 'the mother of parliaments'. Its progeny has spread everywhere on our globe where democratic institutions have come into existence It is the largest legislative body in the world , nowhere does parliament contain a greater number of persons than the House of Commons and the House of Lords separately, as well as, collectively Its most distinctive feature, however, is its unlimited jurisdiction and power There is no subject on which it is not competent to legislate and there is no higher human authority which sets limits to its law-making powers. It is sovereign in all matters, legal and constitutional, temporal and ecclesiastical. It can legislate for about one fourth of the human race It is thus one of the most interesting modern legislatures

The British legislature consists of the King-in Parliament and not of Parliament alone as the student is apt to assume. In the strict sense the King is not a part of Parliament, though he is an integral part of the legislature in Great Britain * No bill passed by Parliament can become law unless it receives the royal assent That royal assent is a mere matter of form and cannot be withheld is irrelevant ; though a formality, it is indispensable In so far as the role of the King as a part of the legislature is limited to giving assent to the measures passed by Parliament, nothing more need be said about it here We shall be concerned in what follows with Parliament, its composition, powers and functions, and the process of law-making

* Some writers hold that the term Parliament includes the King

Parliament — The British Parliament consists of two chambers, the House of Commons and the House of Lords Something about the origin of Parliament and its organisation into two Houses has been stated in Chapter II, the topic need not be pursued further Although the House of Lords is the older of the two chambers and was an august body not very long ago, we shall begin our study of the British Parliament with an account of the House of Commons which has become the principal and most powerful part of it. For several purposes the House of Commons is the British Parliament Walpole put the matter beautifully and succinctly when he observed: 'When a minister consults Parliament, he consults the House of Commons: when the Queen dissolves Parliament, she dissolves the House of Commons A new Parliament is simply a new House of Commons.' The Parliament Act of 1910-11 makes it possible for a bill passed by the House of Commons to be presented to the King for the Royal assent without the concurrence of the House of Lords. When the British Parliament is regarded as the 'mother of parliaments', the reference is always to the House of Commons; it is the progeny of the House of Commons and not that of the House of Lords which has spread into other countries The fact that the story of the way in which the House of Commons first struggled for freedom and then for power is an epitome of British history lends to it a peculiar significance and importance The vital position occupied by the House of Commons in British public and political life is thus described by Sidney Low :—

'The House of Commons is the most remarkable public meeting in the world Its venerable antiquity, its inspiring history, its splendid traditions, its still youthful spirit and energy, the unrivalled influence it has exercised as the model of Parliaments, its inseparable connection with the vitality of the English nation, its place as the visible centre, the working motor of our constitution— all this gives it a unique position. More than the monarchy itself, more, far more than the Cabinet, it

attracts the attention not of Englishmen alone, but of foreigners Its debates are studied beyond the Channel and beyond the Ocean ... For a man to have attained a conspicuous station in this august assembly, to be numbered among its leaders, its trusted councillors, its favourite orators, is to be counted among the foremost figures of his age'

In this chapter we shall study its constitution, organisation, powers and functions and legislative procedure, reserving the House of Lords for the next.

Constitution of the House :— (*a*) *Constituencies and the electorate* :— To day the House of Commons is a wholly elected body. Every one of its 615 members is elected All except the 12 representatives of the Universities are elected on the basis of universal adult franchise from territorial constituencies. In all there are 595 constituencies of which 577 return one member each There are only 13 multi-member constituencies The British system of representation is thus mainly geographical and not functional or occupational, and the constituencies are predominantly single membered

This, however, has not always been the practice. In earlier times representation was primarily functional or occupational, and only incidentally territorial It was given not to individuals as such residing in a particular area but to classes, or interests like landlords, merchants and clergy etc It was also highly restricted. The change from occupational to territorial, and from property to universal adult franchise was brought about only gradually It was the result of a series of 'reform acts' passed during the last hundred and odd years. The process began with the passing of the Reform Act of 1832 It removed some of the glaring defects of the old system, overhauled the suffrage requirements and extended suffrage to about half a million more people. It also redistributed seats. The Acts of 1884 and 1885 achieved for the counties reforms similar to what had been done for the boroughs by the

Act of 1832 The next great landmark was the Representation of the People's Act of 1918 which swept away all the restrictions upon manhood suffrage and also gave the right of vote to about 8,500,000 women In so far as it placed some restrictions* on women's right to vote it did not establish *universal adult* soffrage It was the chief object of the Representation of the People (Equal Franchise) Act of 1925 to remove all the distinctions and give the right of vote to all men and women of the age of 21 years or more who have lived in the constituency since the 1st of June preceding the election It thus took democratic England about a hundred years to establish universal adult franchise †

At the present time under universal adult franchise about 60% of the total population of Great Britain has the right to vote. In 1831 not more than 4% enjoyed the right As elsewhere, undischarged insolvents, idiots, aliens, paupers and criminals are not qualified to vote In addition 'peers' are also disqualified They are debarred from voting for the House of Commons because they are members of the House of Lords Every British subject, whether he is a Britisher, Canadian, Australian, South African, Indian or a New Zealander has the right to vote provided he satisfies the residential qualification

Great Britain has realised to the fullest degree only one principle of democratic franchise, namely, universal franchise; she has not yet reached the goal in regard to the second principle: one man, one vote Plural voting still remains, though to a limited extent only The rules in force allow a man or a woman to vote in one constituency as a resident and in another constituency as an occupier of land or premises of an annual rental value of £ 10/- for purposes of trade or business etc But in no

* In order to be entitled to become a voter a woman was required to be an occupant of property or the wife of an occupant and not less than 30 years of age.

† Interesting though the provisions of the various Reform Acts named above are, they have not been stated in any detail in the text because they are not absolutely necessary for our purpose The student may consult Ogg or Munro.

ease may a person vote in more than two constituencies A University graduate also has two votes, one as a resident in a territorial constituency, and the other as a graduate Except for this, plural voting does not exist in Great Britain It should be remembered that no person can have more than one vote in one and the same constituency.

(*b*) *Electoral Problems.*— Several important questions arise in connection with elections to the House of Commons. The first is that of mapping out the country into a number of electoral districts or constituencies In the United States of America there is a law requiring that after each decennial census there must be a redistricting There is no such law or custom in Great Britain, there Parliament might rearrange the constituencies whenever it likes; it has done so in the past at irregular intervals The last general rearrangement or redistricting took place in 1918; the one before it occurred in 1885. Political motives are not allowed to influence the work of redistribution of seats whenever it is taken up, gerrymandering of the type current in the United States has no room in British political elections The question of redistricting is taken up solely with a view to the removal of electoral anomalies and inequalities produced by shifts in population Effort is made to make the various constituencies as much equal in size and voting strength as possible. At the present time the 615 members of the House of Commons are distributed as follows: England 492, Wales 36, Scotland 74, Northern Ireland 13 300 members represent counties, 303 are borough members, while 12 represent the various Universities

It may be pointed out here that there is no law or custom in Great Britain which requires a parliamentary candidate to be the resident of the constituency from where he seeks election It is enough if his name is on the electoral roll of some constituency and he is not otherwise disqualified to stand There are no positive qualifications for membership of the House of Commons except that a person must be a British subject and of age, and

should be willing to take the oath of allegiance. There are, however, certain negative qualifications Peers, clergymen of the three great Churches, sheriffs of counties and mayors of boroughs, persons holding contracts from the government or offices under the Crown of a non-political nature, convicts, lunatics and idiots cannot become members of the House of Commons Women are eligible, there are a few women M P 's at the present time

A more important question than the one discussed above is the determination of the time for the holding of a general election Since a general election can take place only after the dissolution of Parliament, the question virtually resolves itself into the following When and how may Parliament be dissolved? In answering this question it must be remembered that Great Britain has the parliamentary or cabinet type of government and not the presidential form as it prevails in the United States of America. In this type of government the legislature can be dissolved before the expiry of its full statutory period It is interesting to note that during the last one century and a half only one Parliament, that of 1867—73, reached its full term (it was a seven years' term then), in all other cases it was dissolved earlier * The result is that in Great Britain parliamentary elections do not occur at regular intervals as they do in the United States, or even in France where a convention has developed that in case of a defect in the legislature the cabinet cannot appeal to the country Sometimes three or four years might pass without an election, and sometimes there may be an election in one year following a general election in the preceding year Once there were elections in three successive years, in 1922, 1923, and 1924. In 1910 there were two elections The British House of Commons has thus no fixed life, it may endure for one, two, three, four or five years as conditions determine It should also be remembered that though the Parliament Act of 1911 has put the maximum

* A few more reached near the end of the term but did not complete it, e g the one under the Coalition government of 1931—35.

life of Parliament at five years, thereby determining that the interval between two successive elections connot exceed the five year limit, under an emergency Parliament can extend its life beyond the statutory period During the first World War the parliament elected in 1910 was continued till 1918, and in the second World War the parliameot constituted in 1935 was continued till 1945 It was considered undesirable to hold a general parliamentary election during the pendency of the war

The decision to dissolve Parliament and appeal to the country is always made by the Prime Minister in consultation with his colleagues in the cabinet But the dissolution takes place only when the King issues a royal proclamation to that effect and indicates his desire 'to meet our people and to have their advice in Parliament' In other words, the Cabinet decides and the King decrees the dissolution The royal proclamation also sets into motion the electoral machinery Into details it is not necessary to enter *

We may now pass on to a consideration of the reasons which may lead the Prime Minister to seek the permission of the King for an appeal to the country before the expiry of the full term. Sometimes he may take the decision to advise dissolution when he finds that the chances for an electoral triumph are promising This happens when a parliament is about to run out its term Occasionally the thought is prompted by the desire to save a tottering ministry from defeat Sometimes the government may find it necessary to obtain a mandate from the nation on a newly arisen issue It is a great advantages of the cabinet system that it allows elections to be held when genuine issues are to be settled It has a disadvantage also in so far as it gives a tactical

* Prior to 1688 there was another way also in which a parliament could be terminated, viz., by the death of the monarch The Reform Act of 1867 made the duration of a parliament independent of the death of the reigning monarch It may also be stated that the present five-year term was fixed only in 1911. From 1716 to 1911 it was a seven year and prior to 1716 only a three year term

advantage to the party in power over the opposition. The Government can spring an election 'on a sleeping opposition, and thereby obtain an undue advantage over it

Since the interval between the official announcement of dissolution and the date for the nomination of candidates is usually brief, being only eight days, the different political parties do not wait for the royal proclamation to select their candidates but keep their lists ready The national or central organisation of each party prepares its list of candidates for the various constituencies on the basis of recommendations made by the local organisations The process by which the Indian National Congress or the Muslim League selects its candidates is very much similar to the method in vogue in Great Britain Preference is always given to candidates who are popular in their respective constituencies and are likely to win the election The nomination procedure is simple All that the candidate is required to do is to file the nomination paper signed by ten qualified voters of the constituency and deposit a security of £ 150/- which is forfeited, if he fails to secure at least one-eighth of the total number of votes cast. In our country the nomination paper has to be signed by two voters only, one of them is the proposer and the other the seconder; no additional names of voters assenting to it are necessary

The election takes place on the ninth day after the nomination (sundays and other holidays excluded) The electoral campaigns in Great Britain are thus brief in duration ; 'the battle of ballots' lasts for about eighteen or nineteen days In our country and in the United States this period is much longer. It should, however, be remembered that the short duration of the electoral campaign is not so real as it looks In one sense it may be said to be going on most of the time The parties keep themselves in readiness for the election ; it is but seldom that any one of them is caught napping There are also by-elections to keep the spirit of contest alive Members nurse their consti-

tuencies All this should not be taken to detract from the truth of the statement that in England electoral campaigns are not so long drawn-out affairs as in the U S A Less money is spent on elections in Great Britain than in America, there is also less of personal canvassing and of corruption and illegal practices In regard to electoral affairs Great Britain has become an almost exemplary nation in the world It should also be remembered that all the members except those representing the Universities are chosen in the same way, on the same day, and by the same suffrage

Election petitions filed by defeated candidates are heard by the courts The Judges set aside an election only when there is evidence of corruption or illegality sufficient to influence the result, merely technical faults do not influence the decision Voiding of an election is not common

Before proceeding to discuss an important question which has been raised about the British system of election it seems desirable briefly to refer to one very curious fact about the membership of the House of Commons A duly elected member may lose his seat if he becomes bankrupt or goes insane, he may be expelled by the House for felony or treason He may lose his seat there on becoming a Lord, but he cannot *resign* his seat voluntarily This is a survival from old days when membership of the House was a burden sought to be avoided by persons but imposed upon them by the community, and not a position carrying honour and influence with it. If a member wants to relinquish his seat, he has to adopt a round about procedure Membership of the House is incompatible with the holding of an office under the Crown (other than a political post) Therefore what a person has to do in order to cease to be a member is to obtain some office of this sort The office generally used for this purpose is the Stewardship of the three Chiltern Hundreds of Stoke, Desborough and Burnham in Buckinghamshire. A member

applies for this office, gets it, ceases to be a member of the House and then resigns the stewardship The office is known to have changed hands twice in the course of a day Why a member should be compelled to adopt this indirect method and not be allowed to resign his seat directly is not at all easy to explain This is an apt instance of the inherently conservative character of the British temperament There is no recall in Great Britain, there is no method by which a constituency can get rid of its representative before the dissolution of Parliament, however unpopular he might become with the voters for neglect of duties or some other reason

Other Electoral Problems in Great Britain — In several respects the House of Commons approximates to what a really democratic chamber should be It is a wholly elected body and is constituted on the basis of universal adult suffrage The electoral districts are small enough to allow the representatives to nurse their constituencies and develop intimate contact with the voters, and the elections are fair enough But it has some features to which objection has been taken Plural voting and university representation have come in for a good deal of criticism, and it is not unlikely that an effort may be made to abolish them; they are certainly inconsistent with the democratic ideal : one man, one vote They, however, do not constitute major issues like the problems of majority election and minority representation Writers like Ramsay Muir contend that the present method of constituting the House makes it unrepresentative of the nation, and, therefore, undemocratic Something more than mere universal franchise is needed to make a legislature truly representative ; it must be representative of 'all substantial bodies of public opinion, as nearly as possible in proportion to their numbers'* The electoral system of Great Britain with its single-member constituencies and election by a bare majority makes the realisation of this ideal impossible. All the substantial

* Ramsay Muir — *How Britain is Governed*, page 126

bodies of public opinion do not necessarily get representation in the House of Commons inspite of adult franchise, and those which succeed in securing it may fail to obtain seats in proportion to their voting strength The voting figures for the last several general elections prove the truth of this assertion

	Conservative Party		*Liberal Party*		*Labour Party*	
Year	*Votes secured*	*seats won*	*Votes secured*	*Seats won*	*Votes secured*	*Seats won*
1922	38 7 %	56 4 %	28 6 %	19 6 %	29 6 %	22 9 %
1923	38 3 %	42 2 %	23 4 %	9 4 %	37 0 %	47 0 %
1924	47 8 %	67 4 %	17·9 %	7 0 %	33 1 %	24 9 %
1929	38 %	41 1 %	23 %	9 4 %	36 %	46 8 %
1931	Coalition party 67 1	90 0 %	0 5 %	0 7 %	30 6 %	8 4 %

The significance of the figures can be stated in another way also In the election of 1922 the Conservatives got one seat for every 18,180 votes, the Liberal party for 48,540 votes, and the Labour party one seat for 30,706 votes In the election of 1929 one seat cost the Conservatives 34,000 votes, the Liberals 90,000 votes and the Labour party 29,000 votes In the 1931 election the government coalition party secured one seat for 29,000 votes, the Labour party for 44 000 votes and the Liberals for 25,000 votes. These figures demonstrate beyond the shadow of doubt that single-member constituency system is most iniquitous in its working. It has enabled one party with a minority of votes in the country to obtain an absolute majority of seats in the legislature Other parties have failed to win seats in proportion to their voting strength It makes the result of an election so unpredictable that every election becomes a gamble It also serves to obscure the mind of the nation instead of revealing it, and exercises an unwholesome influence on the minds of the voters It is instructive to see how all this happens

The chief feature of the single member constituency system as it is in vogue in Great Britain is that the candidate who obtains

the largest number of votes is declared elected, whether he has been able to secure an absolute majority of the total number of votes polled or not So long as there are only two candidates in the field the winning candidate is bound to get an absolute majority of votes, but where there are three or more contestants the situation may be otherwise, and the winner is likely to obtain less votes than the other candidates put together Suppose there are four candidates contesting a seat, and that one of them gets 15000 votes, the second 14,999, the third 14,500, and the fourth 5,501; the first candidate would be declared by a majority of one and would be considered to represent the entire constituency including the 35,000 voters who voted for the three defeated candidates. According to the British law the last candidate would forfeit his security This system of majority election suffers from serious defects In the first place, it means that the votes cast in favour of the losing candidate or candidates are wasted, they exercise no influence upon the composition of the legislature or upon the course of events In practice it amounts to disenfranchising a large number of voters and thereby deprives universal franchise of its meaning and significance The system prevents all sections of political opinion from being represented in the chamber, and makes the House of Commons unrepresentative in one sense Its second grave defect is that it makes it possible for a party having a minority of voters in the country to obtain a majority of seats in the House On many an occasion the Conservative party got an absolute majority in the House with less than 40% of the total votes polled On the contrary some parties obtain fewer seats than what they would be entitled to on a proportional basis This has been generally the case with the Liberal party since 1922 In other words, as has been pointed out above, according to this system the cost of votes per seat is not the same for all the parties, *e g*, in the election of 1929 one seat cost the Liberals 90,000 votes, but the Labour party only 29,000 votes. This is obviously unfair and opposed to democratic ideals. The matter may be

stated in another way also In the 1929 election the Conservative party secured 256 seats as against 232 to which it would have been entitled in proportion to the votes it polled, the Labour party won 288 seats as against 225 which was its due, and the Liberal party only 59 seats in place of 143 Similarly in the election of 1931 the Government Coalition party obtained 493 seats in place of 368, Labour 46 in place of 168, Independent Liberals 4 in place of 3 and others 5 in place of 9 *

These are not the only defects of the system ; it has other serious flaws also It encourages *negative* voting, *i e*, voting not for what a man believes in but voting against what he dislikes It can be illustrated as under Suppose there are three candidates contesting from one constituency One voter X wants to cast his vote in favour of candidate C but knows that circumstanced as the latter is there is no earthly chance of his being returned. He therefore decides not to waste his vote by giving it to him He does not like candidate B and positively dislikes A, therefore to prevent A from getting in he votes for B This sort of negative voting distorts the nation's verdict, the result of a

* The grave inequalities to which the British system of majority election from single member constituencies gives rise would become clear if the total number of votes secured by each of the three main parties and the the number of seats won by it in each one of the last general elections are stated in a tabular form as under

Year	*Conservative total votes*	*Seats won*	*Liberal votes*	*Seats won*	*Labour votes*	*Seats won*
1923	5 500 553	345	4 075,360 2,510,257	53 (National Lib.) 61	4,241,383	142
1924	8,539,574	359	4 311,147	158	4 439 509	191
1929	7,954,513	509	5 923 774	35	5 489 077	143
1931	8 650 032	556	5 309 426	52	8 383 501	293
1935	10 496 000	475	1,433 000	19	8,465 000	169

If seats were assigned to the different parties in strict proportion to their voting strength in 1931 the Conservative party would have been entitled to 370 seats in place of the actual 473 the Liberal party 110 in place of the actual 68, and the National Labour party would have had 80 instead of the 13 it actually got. No further proof of the injustice involved in the British system is needed

general election does not necessarily mean that the country has definitely voted for one set of principles and against an other. It is quite feasible that the great landslide in favour of the Labour party in the election of 1945 may betoken merely want of confidence in the conservative programme and not necessarily love for socialism Its other defect is that it places power in the hands of 'the least solid, the least instructed and the most wavering part of the electorate— into the hands of those who can be driven this way or that way by sudden panics, or electioneering stunts, or campaigns of creeping slander, or wild and reckless promises'* Where the contesting parties are more or less evenly balanced, it is the people on the borderland who generally do not take any serious interest in politics whose votes decide the issue. The different parties adopt all sorts of devices to catch such floating votes and the individual candidates are sometimes led to compromise with their principles It is not necessary to labour the point further Enough has been said to show the serious blemishes of the British system of election †

Various devices have been suggested to remedy these defects Some recommend the second ballot, some the cumulative vote system, and others the limited vote plan None of these has found so much favour with writers on Political Science as the plan of Proportional Representation A detailed discussion of it can be found elsewhere‡, only a brief account is subjoined below

Proportional Representation — It is a scheme of representation designed to remove the more serious defects inherent in the system of majority election from single member constituencies Its great merit is that it ensures to every substantial body of political or public opinion in the country representation

* Ramsay Muir *Ibid* page 101

† Those who want to pursue the topic further and go into details, are referred to Ramsay Muir, *How Britain is Governed*, Chapter V

‡ See the author's *Elements of Political Science*, pages 401 ff

in the elected bodies in proportion to its actual voting strength This point will be best and most easily understood by taking the case of India as an illustration As the situation stands to day it is extremely difficult, if not impossible, for an independent or Hindu Sabha candidate, or a candidate put up by the Radical Democratic or Communist party successfully to contest an election against the Indian National Congress in a general constituency Similarly the non Muslim League candidates find it no easy job to challenge the might of the Muslim League in Muslim constituencies Non Congress Hindu opinion is almost completely unrepresented in the Assemblies and Councils constituted in 1946, and the nationalist element among the Muslims has not been able to secure the amount of representation it deserved according to the backing it has in the country This sort of over-representation of some and the under representation of other groups is an impossibility under the P R scheme which would enable each party or interest to secure seats in proportion to the number of votes polled in its favour. In the second place, under it no vote is wasted, every vote is utilised in securing the return of some one candidate or other. The phenomenon of a very large number of voters, sometimes as large as 60 to 70%, being practically disenfranchised is impossible By virtue of these two features P R ensures that the legislature shall be a faithful mirror of public opinion, that it shall correctly reflect and not distort the national mind It also takes away controlling power from the hands of a group of unstable and comparatively uninstructed persons No better system of giving fair representation to the minorities has been suggested

There are many forms of proportional representation One of the more commonly adopted is that known as the Single Transferable Vote system Like other variants it requires multi member constituencies No maximum limit has been fixed, the number of candidates to be returned may be anywhere between 3 and 15 or 20 It works well with four to ten or twelve seats.

But whatever the number of seats to be filled, each voter has only one vote He can, however, indicate on the ballot paper the order of his preference among the candidates by marking them as 1, 2, 3, 4, etc If for some reason his first choice does not require his vote, it may go to the second choice, if the second choice also does not stand in need of it, it may go to the third, and so on The point is that it shall be taken into consideration and not allowed to go waste In order to be declared elected a candidate has to reach the *quota* The *quota* is 'the smallest number of votes that could be received by as many candidates as there were seats to be filled, yet by no larger number' There are several ways of determining it The commonest method is to divide the total number of votes polled by the number of seats to be filled plus one and add one to the quotient The formula may be represented as follows: $\text{Quota} = \frac{\text{Total number of votes cast}}{\text{Total number of seats to be filled} + 1} + 1$ If the number of candidates to be returned from a constituency is nine and the total number of votes polled is 100,000, the quota would be 10,001 The quota being determined, the counting of votes begins At the first counting only the first preference votes are taken into consideration, and candidates receiving the quota (or more) are declared elected If at the first count all the seats are not filled— this is likely to be the case— votes not needed by the successful candidates are transferred to candidates indicated as their second choice by these votes, and with the help of such second preference votes some of the candidates, who failed to win the required quota of first preference votes, may succeed If even with the help of second preference votes all the seats are not filled, the third preference votes are utilised In this way all the vacancies are sought to be filled If a candidate is so far behind that there is no chance of his being returned with the help of his first, second or third or even fourth preference votes, the first preference votes cast in his favour are not counted; the votes of

such voters are given to their second choice In this way an effort is made that each vote is used in securing the return of some one member to the legislature The process of counting is highly complicated , this constitutes one of the chief difficulties of the scheme It is also feared that the adoption of the scheme would lead to the multiplication of parties and encourage sectional interests Under a multiple party system it would be extremely difficult for any single party to have an absolute majority in the legislature Governments would be coalition governments with all the instability inherent in them But this flaw is common to all forms of proportional representation Those who prefer to have a stable government backed by a stable majority in the legislature will refuse to have proportional representation in any form or shape The question of the introduction of the scheme of proportional representation in Great Britain is thus vitally connected with the question of bi party versus multi party system

List system is another form of P R. It was employed in Germany according to the Weimer Constitution The whole country was divided into 35 constituencies (as against the 600 constituencies into which Great Britain with a much smaller population is divided) Every organised party put up a list of its candidates in order of merit, and the voters voted, not for individual candidates, but for the parties Every party obtained one seat for every 60,000 votes, and the seats were allotted to the candidates in the party list in order of priority Surplus votes in the different constituencies were pooled together and were utilised for securing the election of candidates on the national party list who were not elected from the constituencies The scheme worked well for some time but was given up at a later stage This system has its own characteristic defects arising from the gigantic size of the constituencies and the absence of intimate contact between the voters and the elected candidates It also puts too much power into the hands of parties

Though proportional representation in one form or another has been adopted by several European countries, it has not been ed on any extensive scale in Great Britain or the United States of America The traditional conservatism of the British temperament partly stands in the way, its introduction will mean the disappearance of the existing single-member constituency system and the mainly bi party system. Because each of the two major parties hopes to obtain benefit for itself from the current scheme, no one is really anxious for its removal, both are content to leave the things as they are So long as British politicians continue to view the problem from the standpoint of personal and party advantage, reform of the existing electoral scheme is difficult In Great Britain P R is employed for the election of some university representatives

Organisation of the House — There is no law in Great Britain regulating the duration of the interval between a general election and the assembling of the new Parliament, but in practice it is made as short as possible The new Parliament meets within about two weeks of the election and begins its work

When Parliament assembles for the first time after an election, an official messenger of the House of Lords, called the Gentleman Usher of the Black Rod, invites the members of the House of Commons to present themselves at the bar of the upper house where they are informed by the Lord Chancellor about the wish of the Crown that they choose some proper person to be their speaker In other words, the first business of a newly constituted House is the election of the speaker Besides the speaker there are other officers of the House, namely, the clerk and his two assistants, the sergeant-at-arms and his deputies, and the chaplain The clerk and the sergeant-at arms together with their assistants are appointed by the King on the advice of the prime minister, and the chaplain is appointed by the speaker. All these officers are appointed for life and not for the duration of a

parliament like the speaker Mention may also be made of two *other important officers of the House, namely, the chairman and* deputy chairman of committees They are appointed by the Government from amongst its supporters and are not re-elected on change of government They are thus political offices, *i e*, their occupants resign when the government goes out of office

The chief functions of the clerk are the following to sign all orders of the House, to endorse bills sent or returned to the House of Lords, to record the proceedings of the chamber, to keep in custody all records and documents, and to supervise the preparation of the *Official Journal* (in collaboration with the speaker). The main function of the sergeant-at arms is to preserve decorum in the chamber, direct the doorkeepers and messengers, enforce orders of the House, and execute warrants issued by the speaker.

The Speaker.— The office of the speaker is of much greater dignity, power and honour, It is as old as the House itself Most probably the name was derived from the fact that in olden days the person appointed to it alone had the right to speak to the King on behalf of the House Originally, his function was to take petitions and resolutions from the House and place them before the King, and not to speak to the House itself Though to-day he performs no such functions— the necessity for them has disappeared with the change in the status of the House from a petitioning to a law making and deliberative body— the old name still continues. It has even been adopted in countries which have borrowed their representative institutions from Great Britain It should be remembered that he still remains the official spokesman of the House in its dealings with the Crown though there is not much left for him to do in this capacity on account of the rise of the prime-ministership.

Originally, the speaker was appointed by the king, but in the course of its struggle for power the House gained the right to

choose him from amongst its members. To-day the speaker is elected by the House subject to the approval of the Crown, but both the election by the House and the royal approbation are mere formalities. In reality, the selection of the person to hold this august office is made by the prime minister before the House takes any step in the matter. In making the selection the prime minister consult his colleagues in the cabinet and assures himself that his choice will be generally acceptable to the House. When the members of the House return from the House of Lords for the election of the speaker, one member moves that Mr. so and so take the chair and another member seconds the proposal. The speaker designate then rises in his seat and submits to the will of the House which acclaims him with cheers.

Although the speaker is elected for the duration of parliament, and a new parliament is always called upon to choose a proper person as its speaker, the speaker's election is not contested except when the old speaker retires and a new one has to be elected. This is because a healthy tradition has grown up in Great Britain that a new House always re-elects the person who served as the speaker in the preceding parliament, even if a different party has come into power. It is, therefore, not uncommon to find a conservative serving as the speaker under a liberal or a labour government and *vice versa*. Once a speaker, always a speaker. This tradition could develop only because of another tradition—that of the strictly non-partisan character of the office. From the moment a person occupies this office he ceases to be a party man and severes his connections with the party to which he belonged. He does not attend any party meetings or participate in political discussions, or even offer advice on any political affair. With exaltation to the office a person must accept an exile from politics. In consequence, so long as he wishes to remain speaker, his seat even is not contested, he is returned unopposed. But in the recent past a labour member violated this tradition and stood as a candidate from the speaker's constituency. The public did not

applaud the act or the spirit behind it. This exile from politics is deemed to be necessary to ensure impartiality on the part of the speaker He is expected not to show any favour to any party. In our own country this tradition has been observed by the presiding officers of all legislative bodies except the U P Legislative Assembly Shri Purshottam Dass Tandon declared that conditions here were different from those prevailing in England and that the speaker should not be debarred from taking his due share in the national struggle for freedom. He therefore continued to be an ardent congressman while he discharged his duties as speaker with absolute justice and impartiality It is certainly possible for a person to retain party connections and yet be just and fair in his official dealings. The speaker must also be a man of parts, able, vigilant, tactful, calm and cool and a thorough master of the technicalities of procedure.

The speaker of the House of Commons performs a variety of functions He occupies the chair when the House is in session, recognises persons, i e, decides who is to have the floor, maintains order and decorum, warns disorderly members and suspends them from sittings, interprets the rules of the House, puts questions and announces the results of votes, and is the custodian of its dignity and privileges He decides all points of order and gives rulings which are final He does not vote except to break a tie And when he has to give his casting vote, he does so in accordance with the rules and regulations of the House and not according to his personal and political likes and dislikes which, as has been stated above, must be kept submerged The point to be understood is that he has no will of his own which he can impose on the House; his main business is to find out the will of the House as embodied in its precedents and rules. These are the functions which the presiding officers of legislative bodies usually perform all the world over There are however some other functions of great importance which constitute the distinguishing features f

the British speaker. The Parliament Act of 1911 has conferred upon him the power to decide whether a Bill is a money bill or not— a power of much significance for it practically determines the fate of the measure On occasions he has to appoint the members of great conferences and commissions and preside over certain conferences

The speaker's office is thus one of great prestige and dignity. He is given a salary of £ 5,000 a year and an official residence in the Westminister Palace On retirement he is made a peer and given a pension of £ 4,000 Speaker Whitley declined the offer of peerage in 1928 It is instructive to draw a comparison between the British speaker on one side and the speaker of the American House of Representative or that of French Chamber of Deputies on the other The two latter dignitaries do not shake off their party affiliations but continue to remain party men They are even expected to give some advantage to their respective parties in conducting the affairs of the house over which they preside The French speaker was known to leave his chair and pour forth oratory by the hour But tradition is developing there along British lines. On account of the nature of the work demanded from him, the British speaker is shown much greater deference by his countrymen than is the case in the United States or France

How the Session Opens — The day following his election, the speaker, accompanied by the members of the House, presents himself at the bar of the House of Lords, announces his election, and receives the royal approval through the Lord Chancellor He also demands and receives the ancient privileges of the Commons, namely, freedom of speech, freedom from arrest, the right to regulate its own procedure and others On returning to their chamber, the speaker and the members take the oath of allegiance On the day following, the members once again are summoned to the Lords to hear the King's speech, read either

by the king in person or by the Lord Chancellor in his absence This speech from the Throne, as it is called, is not really the King's speech but is prepared by the Prime Minister and outlines the main policy of the government in foreign and home affairs, and also says something about the great measures to be introduced during the session After the speech is over, the Commoners retire to their chamber where the speech is re read and debated In reply thereto, an address is voted in each House which amounts either to a vote of confidence or no confidence in the government The debate on the address may last for several days, and the opposition members may move amendments to it After it is concluded, the House proceeds with the formation of committees and enters upon regular business

Committees in the Commons — Lawmaking is one of the principal functions of the House of Commons For the smooth and efficient performance of this work as well as for economy of time it makes use of several committees Indeed, all the world over, legislative bodies find it necessary and convenient to assign a good deal of preliminary work to committees But committee system differs from country to country It has assumed one form in Great Britain and another in the United States, and the French system differs from both In our own country we have not yet developed any distinctive system

Five different types of committees are employed in the House of Commons They are (1) The committee of the whole House, (2) Select committees on public bills, (3) Sessional committees on public bills, (4) Standing committees on public bills, and (5) Committees on private bills

The Committee of the Whole House consists of all the members Its sessions are distinguishable from those of the House itself by the following facts: It is presided over by the chairman of committees and not by the speaker, the mace which is the symbol of the speaker's authority is placed not on the table

but underneath it ; the procedure is less formal in so far as a motion need not be seconded and a member may speak as many times as he likes, and the discussion cannot be terminated by moving the 'previous question' All money bills are necessarily referred to a Committee of the Whole House The Government prefers to have its important measures considered by such a committee because it retains greater control over it than over other committees When the House sits as a committee to consider appropriations or demands for grants, it is known as the House in Supply or the Committee of Supply ; when it sits to consider the government proposals for raising the necessary revenues, it is called the Committee of Ways and Means. It should be remembered that the chairman of committees who presides over a Committe of the Whole House is a staunch party man. When the committee has finished discussing the measure placed before it, it rises, the House comes into session with the speaker in the chair, and the chairman of the committee reports the measure to it

A *select* committee on public bills consists of 15 members and is created from time to time to consider and report upon some individual measure on which legislation is either pending or contemplated Its purpose is generally to gather information required for intelligent legislation, examine witnesses and so on It selects its own chairman who keeps a detailed record of its proceedings and reports to the House The names of the persons who are to constitute it are proposed by the member who moves for its appointment The committee goes out of existence when its work is finished Nearly about a score of such committees are appointed in the course of a session.

Certain select committees are created for the entire session and specific measures are assigned to them. They are called sessional committees There are about eight to ten sessional committees, the Committee of Selection, the Committee on

Standing Orders, the Committee on Public Accounts and that on Public Petitions are the better known among them.

More important than the select or sessional committees are the *five standing* committees, known as the A, B, C, D, and Scottish Affairs Committees. They are appointed at the beginning of each session and continue till Parliament is prorogued Each one of them consists of 30 to 50 members designated by the Committee of Selection All public measures with the exception of those referred to the Committee of the Whole House are assigned to the one or other of these standing committees as directed by the speaker. The Committee of Selection might add 10 to 35 additional and temporary members to a committee for the consideration of some particular bill These additional members are chosen with due regard to their knowledge and familiarity with the subject to be dealt with and cease to be members when the consideration of the subject is finished A standing committee is made large intentionally in order to make it in effect a 'miniature legislature' It is expected that a measure referred to it will be discussed and scrutinised so thoroughly that it would not take any large time of the House as a whole It may be added that in nominating members to serve on a standing committee the Committee of Selection pays due regard to the composition of the House This means that the various parties are to be represented on it as nearly as possible in proportion to their strength in the House The modern standing committees are a recent innovation, they were first introduced as an experimental measure in 1883 The Committee of Selection which nominates members to serve on the different standing committees itself consists of 11 members of long experience They represent all the parties and are nominatedt by the House at the beginning of each session

There are standing committees in the United States and in France, but they present many points of contrast to the British committees both in number and composition The British

committees are much fewer in number but considerably larger than those in America— being five only as compared to about 4 dozen on the other side of the Atlantic, though many of the latter are useless The largest British committee may have a membership of about 85 whereas the largest committee in the American House has only 35 members The American committees are associated with the various administrative departments and are constituted in a different manner The majority and minority parties in the House of Representatives draw up their own separate lists of representatives on each committee and the lists are then combined and voted by the House They are constituted more definitely on party lines than those in the House of Commons Their chairmen are also differently chosen In England the chairman for each committee is designated from amongst its own members by the 'chairmen's panel' named by the Committee of Selection; in America the chairman is named by the House He is the seniormost member belonging to the majority party There are other points of difference also in their working which shall be stated at a later stage

The *committees on private bills* are a peculiar feature of the British House of Commons Nothing like them is to be found in the United States or in France This is because in the latter countries no such distinction is drawn between public and private bills as is made in Great Britain A bill is called public if it concerns the citizens in general without reference to any locality ; *e g*, a bill pertaining to education, military service, raising of revenues, or old age pensions A bill is called private if its object is to alter the law relating to some particular locality or to confer some rights on some particular persons or group of persons or to relieve them of some liability, *e g*, a bill permitting a county council to extend a railroad or construct a tramway A private bill is referred to a private bills committee Such a committee consists of four persons named by the Committee of Selection

The House of Lords also makes use of similar committees, the committee of the Whole House, standing committees, sessional and select committees No detailed account of them is necessary.

Commons at Work.— The House of Commons has several important functions to perform It has to make laws, grant funds to the government for carrying on its multifarious work, sanction the raising of revenues to meet the expenditure, watch, supervise, control and criticise the government on behalf of the nation, hold debates which focus attention on politics and make clear to the people what those questions are which they will have to decide, and ventilate grievances by means of questions, motions of adjournment etc Besides these, there are other vital functions also of a different nature which it discharges. With Sidney Low we may describe them as its selective and elective functions They are not conventionally recognised but are of great value and interest Laski lays stress upon its activities as a government-making organ Before describing these functions it seems necessary to say a few words about the rules of procedure according to which the daily routine work is transacted

The rules of procedure as they exist to-day are the product of a slow process of growth Although many of them have been adopted in a written form as standing orders and remain in effect until modified or altered or repealed by the House, custom still plays an important role As Ogg remarks, the basis for settling the stream of procedural questions is not to be found in the printed rules and orders but in the uncodified and largely unwritten customs and precedents of the House It is no easy matter for a member to acquaint himself with them in their entirety, and there is a modicum of truth in the statement attributed to Parnell that a member could learn the rules best by breaking them The point to be borne in mind is that the House is its own master in

determining the rules of procedure It can suspend any rule or repeal it at any time by a simple majority

The lifetime of a parliament is divided into sessions each of which usually lasts a year. The session begins in November, adjourns for the Christmas holidays, reassembles again in January and continues with similar adjournments for Easter and Whitsuntide, till July when the summer recess begins. The House meets for a few days in November when the King prorogues it The next session begins shortly afterwards.

When the House is in session, it meets everyday from Monday to Thursday from 2-45 to 11 p m The day's work begins with a prayer followed by the consideration of such private bills as may be listed for the day and the presenting of petitions This does not take much time Then comes the 'question hour' when private members* interrogate the ministers concerning administrative and other matters pertaining to their respective departments This 'question hour' is often the most interesting part of the day's proceedings and is of the utmost constitutional importance It is during this time that the House acts as a ventilating chamber and throws the light of publicity on the doings of the ministers The knowledge that he is apt to be called to the witness box and made to answer questions acts as a check on the minister, prevents him from developing the bureaucratic tendencies, and compels him to keep an eye on the public and the press This institution is thus an invaluable safeguard for individual liberty ; it keeps the expert responsive to the laymen. It is also useful in other ways. It shows how far each minister understands his department ; it enables individuals to obtain information which otherwise would have been difficult to get, and gives an opportunity to the government to clear doubtful points about its policy There is nothing like this

* All members of the House other than those who form part of the ministry are private members.

interrogation of the ministers in the American House of Representatives

Usually two days' notice is required for answering a question, but on urgent matters the speaker may allow questions on a few hours' notice. He can disallow a question if it is of unreasonable length or contains statements of an argumentative or ironical nature, or refers to any debate that has been held in the current session, or asks for a mere expression of opinion etc There is a danger lest members should abuse this ancient and valuable privilege, and therefore the speaker is made the sole judge of the admissibility of a question

In France a question of a definite type called an interpellation prepares the way for a debate in the Chamber of Deputies which can be concluded only with a vote of confidence or no confidence in the government In Great Britain a question can never lead to a debate. All that may happen in case the answer is unsatisfactory is that the member may move a motion of adjournment If the Speaker allows it and the motion is supported by 100 members, the business of the House is suspended at 7 30 p. m to allow the motion being discussed.

Question time generally ends at or before 3-45 p. m , when new members, if any, are introduced The House is then ready for its work of legislation and control of money which consumes a major portion of its time At intervals, some days are set apart by the government at the request of the opposition for debates on the policy of government on some important matter On Fridays the House begins its work at 11 a. m and continues till 4 p m This is done in order to give time to members to leave for their homes or constituencies for the week end Some Fridays are set apart for private members' bills But if there is pressure of government work, even these Fridays may be annexed by the government for its own bills It should be remembered that

though in theory the House itself settles the order of its business, it is the Prime Minister who states on every Thursday what business will be before it in the following week. As the session progresses government business takes precedence over private business One of the most noteworthy developments of recent times is the gradual elbowing out of the private member from the work of legislation The opportunities given to private members to push their own bills are very meagre All that they get is eight Wednesdays and thirteen Fridays

Parliament means a place of talking or discussion The debates that take place on its floor at the various stages in the passage of legislative measures and on questions of government policy are followed by millions of persons in different parts of the world A few words about their character would not be out of place here Speeches in the House of Commons are addressed to the speaker, and those in the House of Lords to the members In both the chambers members are not allowed to read manuscript speeches, though the use of notes is permissible. Speeches in the House of Commons are generally short; it is unusual for a member to speak for more than an hour, but no time limit is fixed No member is allowed to speak twice on the same question, unless it be to offer some sort of explanation of a part of his speech which has been misunderstood Offensive expressions are forbidden, and members are expected to observe the rules of civilized debate No member refers to another by name but always as the Hon Member for this constituency or that Members transgressing the rules are called to order by the speaker, and if any body defies him and persists in misbehaving he may be named and suspended

Debate on any question cannot be continued indefinitely; it has to be brought to an end some time. Several ways of terminating discussion have been recognized in the House of Commons One of them is simple closure. At any time in

the course of discussion a member may stand up and move that the question be now put If 100 members support the motion and it appears to the speaker that there has been no infringement upon the right of the minority or abuse of the rules of the House, the question shall be put forthwith and decided without further debate or amendment The second form is more drastic and is known as *guillotine* It means that at a stipulated hour on a fixed day a bill as a whole shall be put to vote irrespective of whether any part of it has been discussed or not In other words, a definite time limit is fixed within which discussion on a measure must be over This in turn requires what has been termed 'closure by compartment' It means that discussion on a given part or clause of a bill must terminate within a specified time limit The third form of closure is nicknamed 'kangaroo' It signifies that out of all the amendments to a bill or motion, the presiding officer shall pick out some as more important for discussion and drop out the rest This saves a good deal of time Of course it is not necessary that the speaker must grant the closure whenever it is demanded, he may and sometimes does refuse it.

At the present time the proceedings of the House are reported verbatim and published officially But for long there were no official arrangements for their publication

The Process of Law Making.— From this general account of the manner in which the House of Commons transacts its business we now turn to an examination of the way in which it performs its various functions We shall study the process of law making first

It is not necessary for our present purpose to recall the steps by which Parliament became a legislative organ from the petitioning body it originally was We shall content ourselves with describing the legislative process as it stands to-day At

the very outset the distinction between certain kinds of bills must be made clear, failure to make which is bound to lead to much confusion and error The first is the distinction between public and private bills In some respects the procedure adopted in regard to private bills differs materially from that employed in relation to public bills, hence the importance of the distinction the like of which is not to be found in the United States or in France As has been stated earlier, a bill is called *public* if it affects a general interest and ostensibly concerns the whole body of citizens or a major portion of them A bill altering suffrage, or imposing a tax, or levying prescription, or enforcing prohibition is a public bill A *private* bill does not affect the community as a whole, it concerns some particular interest, *e. g.*, the interest of some locality or some group of persons. Usually the purpose of a private bill is to allow some company or local authority to proceed with some work which interferes with the property rights of private persons, *e. g.*, construction of a tramway or a gas plant by a municipality It always originates with some outside interest, specially local authorities and other statutory bodies of a similar nature, and never with the government If the government introduce a public bill which affects the rights of some particular individuals it is called a *hybrid* bill and is treated like a private bill after the second reading A bill to acquire land for the construction of a government factory is an example of this kind of bill. Mention may also be made of what is known as Provisional Orders Confirmation Bill, its nature will be explained elsewhere.

Public bills are sometimes subdivided into government and private members' bills. A Bill introduced by a member of the ministry on behalf of the government is called a Government Bill The initiative for such bills comes from the government and the responsibility for piloting them successfully through Parliament is also that of the government. They consume a very large part

of the time of the House A bill introduced by a member of the House other than a minister, i e, by a private member, is known as a Private Member's Bill There is very little chance of such a bill being placed on the statute book unless it is backed by the government which it rarely does* The time devoted to them is practically wasted, but the practice continues because it gives the private member an opportunity of advertising himself as the author of a bill Fridays are reserved for the consideration of such bills The right of introducing such a bill is determined by ballot It should be remembered that government bills and private members bills have to pass through the same process in being converted into Acts of Parliament, on this point there is no difference between them as there is between public and private bills This shows that a private member's bill is something quite different from a private bill and should not be confused with it

In the whole process by which laws are made we may distinguish two main stages. The first is the drafting stage with which Parliament is not at all concerned, the second stage commences when a bill is introduced in either House If it is a private member's bill, the drafting is done by the member himself or by someone employed by him for the purpose If it is a government bill, the drafting is entrusted to skilled public draftsmen employed in the office of the Parliamentary Counsel to the Treasury The minister, to whose department the bill belongs, first prepares a rough outline which is scrutinised by the Cabinet The Cabinet may make changes in the light of discussions held with local authorities, the civil service and the interests outside the government affected by it In this way the crude outline as prepared by the minister is worked up and elaborated into a fairly exact statement of its objects and principles It is then passed on to the draftsman who gives to it the shape of a regular bill with its clauses and sections and subsections It is once again

*Out of 470 such bills introduced in the 1922-23 Parliament only 60 were passed Of them 31 were passed without taking up any Friday

considered by the Cabinet, and is ready for submission to Parliament. It may be introduced in any House, provided it is not a money bill Money bills must always originate in the House of Commons As a matter of fact, however, all important measures originate in the House of Commons It is only bills of a non controversial nature which are first introduced in the House of Lords; the practice is not frequent

First Reading — The procedure of introducing a bill in the House of Commons is very simple All that a member need do is to give notice of his intention to move a bill, and when called upon by the speaker, to hand over a copy of it to the clerk of the House who reads aloud its title and nature and purpose This constitutes the *first reading* of the bill It is a formal affair; the House generally accepts the *first reading* without any debate or discussion, and orders the bill to be printed and placed on the calendar to await its turn Sometimes nothing but the title of the bill may be ready and the clerk is given merely a dummy bill

Second Reading — On the day previously fixed, the sponsor of the bill moves that it be read a second time This second reading is the time for a general discussion on its aims and objects and principles Its friends support and defend it, while those opposed to it criticise and attack it in long speeches The point at issue is whether the bill is really needed and the House approves its aims and principles If the House rejects the motion the bill perishes, and if it accepts it, the bill is referred to an appropriate committee, and it enters upon what is known as the committee stage It should be borne in mind that the second reading gives no occasion for an examination of the detailed provisions of the bill, amendments are not allowed at this stage Government bills generally pass this stage, while most of the private members' bills are killed here.

Committee Stage — If the bill is a money bill or an important government measure it goes to the Committee of the

Whole House, otherwise the speaker refers it to one the standing committees. Occasionally it may be sent to a select committee This is an additional stage, for after having been reported back by the select committee it is referred to either the Whole Committee or a standing committee The committee stage is the time for the discussion of the bill in detail and clause by clause and may occupy several weeks Hundreds of amendments are moved by opposition members designed to make the measure something different from what it was or at least to soften the rigour of some of its provisions Tedious discussion is curtailed by the employment of closure in its various forms From the foregoing it would be evident that the private member gets more opportunities of using his talents and contributing to the work of legislation in the Committee than in the House where the debate is arranged by the whips and the result is a foregone conclusion

Report Stage.— The committee having finished its work the bill is reported to the House and enters the *report* stage* There is a general debate on the bill as amended in the Committee, and fresh amendments can be made and inserted This ensures that the bill in its final form represents the will of the House and not merely that of the committee The bill is then ready for the last and final stage in the chamber where it originated, namely, the third reading

The Third Reading — At this stage there is a final debate on the bill giving the opposition the last chance to throw it out Rejection at this stage is uncommon Amendments of a verbal and more or less formal character are allowed The general debate does not take much time After the bill has been read and passed for the third time, it is sent over to the other House to go through all the stages there, the first reading, the second reading, the committee stage, the report stage, and the third

*Every Committee to which a bill is sent is bound to report it back to the House It cannot kill it by merely refusing to report as happens in the U S A

reading If it is passed by it in the same form in which it was passed by the originating house, the bill is presented to the King for assent on receiving which it is put on the statute book, becomes a law of the land and is enforced by the courts

Except as provided for in the Parliament Act of 1911, concurrence of both the Houses of the British Parliament is necessary before a bill can be presented to the king for his assent. It is, therefore, necessary that a bill must be passed by both the Houses in the same form If one House passes a bill and the other rejects it, or one passes it with amendments not acceptable to the other, it cannot be submitted to the king, and therefore lapses Two ways of solving the deadlock between the two Houses have been resorted to in the past Representatives of the two Houses might meet together and try to iron out difficulties; or there might be an exchange of written messages The latter method is usually employed, the conference method has become obsolete In reality, however, the differences between the two Houses are settled and agreement reached more as the result of informal discussions among party leaders than merely through exchange of written messages

Parliament Act — At this stage we may with advantage briefly describe the main provisions of the Parliament Act of 1911 which governs the relationship between the House of Lords and the House of Commons It should be remembered that of the two, the House of Lords is the older and was once an august body and the seat of power Before the passing of the Parliament Act it had co-ordinated authority in legislation no bill could find its way on to the statute book to which the Lords were opposed But things have changed now, the Parliament Act makes it possible for a measure passed by the House of Commons to be presented for royal assent without the concurrence of the House of Lords under certain conditions It has reduced the Lords to a secondary position and made it a true *second* chamber As

Ramsay Muir puts it, 'the House of Lords was bitted and bridled, and reduced almost to impotence' It is perhaps rather an exaggeration to say that the House of Lords has been reduced to impotence, but there is no doubt that the Parliament Act has put serious limitations on its power to block legislation In the first place, it has formally and legally deprived the House of Lords of the power of interfering in financial matters It cannot amend a bill certified to be a money bill by the speaker of the House of Commons Such a bill will be presented to His Majesty for assent if the House of Lords fails to pass it in the form sent to it from the lower house within one month of the date of receipt In the second place, it lays down that while the House of Lords may reject a non money bill twice, if it were sent up to it for the third time in the same form within two years of its introduction in the lower house, it should go up for the royal assent direct In other words, the Parliament Act gives to the House of Lords only a suspensive veto over the House of Commons but not an absolute one It can delay legislation on a matter in which it differs from the Commons for a period of two years but not wholly prevent it A bill seeking to extend the normal life of Parliament beyond five years is exempt from this provision, it requires the concurrence of the Lords

The effect of these provisions is to make the House of Commons supreme legally and to reduce the House of Lords to a definitely subordinate position But it cannot be said that they deprive the House of Lords of all power and make it almost impotent There are Acts which would lose much of their significance if delayed for two years, a government may be driven to accept the amendments proposed by the House of Lords rather than to sacrifice the measure altogether The Labour Government was forced to accept amendments to many of its Acts during the years 1929—31 The situation in India demands immediate action, it would not brook delay for two years A very intriguing and highly annoying situation would

arise if the Labour Government were to pass a bill in the House of Commons recognising the independence of India but was forced to wait for two years by a recalcitrant House of Lords. As Laski has observed its ability to work mischief to a Labour Goverment is still immense* That it is not easy to fulfil the conditions laid down in the Parliament Act would be clear from the fact that since its passage in 1911, effect has not been given to its provisions even once †

Private Bills.— As has been stated earlier, it is one of the peculiar features of the law making process in Great Britain that a distinction is drawn between public and private bills In so far as the aims and objects of a private bill are quite different from those of a public bill, the procedure laid down for its introduction differs in an important way from that prescribed in regard to the latter In the first place, every such bill has to be accompanied with a petition, and every petition must be preceded by published notices to the persons whose private interests are affected by it Copies of such notices must also be sent in advance to the government departments concerned No petition accompanying a private bill can be entertained unless these preliminaries have been fulfilled It is the duty of two parliamentary officials known as the Examiners of Petitions for Private Bills to satisfy themselves that all the requirements have been complied with and to certify to that effect Only when such a certificate has been obtained, the bill can be introduced in either House There is no provision like this in the case of a public bill introduced by a private or by a government member.

After having been introduced, all private bills have to go through the first and the second reading If there is no opposition during the second reading they are referred to a committee on

* See below Chap VII

† It is alleged by competent observers that the First World War prevented the provisions of the Act from being used on many a occasion.

unopposed bills If there is opposition, every bill is sent to one of the several committees on private bills This corresponds to the committee stage through which every public bill has to pass But the way in which a committee on private bills considers the bills referred to it differs in some essential respects from the manner in which a standing committee treats the measures submitted to it The proceedings of the former are quasi-judicial in character The first task of the committee is to examine the preamble to the bill setting forth its object, and to hear arguments advanced by those who advocate it, as well as by those who are opposed to it The arguments are conducted by paid counsels on behalf of each party Witnesses are heard as in a court of law, and the hearings are fair and impartial If the committee are convinced that the preamble has been proved, they proceed further, otherwise the bill is dropped Bills reported favourably by the committee are almost certain to be passed by the House without discussion and then sent on to the other House. It may be stated that the committee examining a private bill is generally in touch with the government concerned and makes itself certain that the bill before it does not conflict with the general policy of the government or create an undesirable precedent *The committee is small, it consists of four members* In the House of Lords it has five members.

This procedure of dealing with private bills has certain advantages and disadvantages It ensures a careful, fair and non partisan consideration of measures coming up before the House Party politics has no place in it The entire scheme is based on the principle that such measures ought to be decided by persons who have listened to both sides and are not prejudiced in favour of or against either side Government seldom or never takes part in the proceedings

Its second merit is that it saves the time of the national parliament. Both the houses practically accept the findings of

the committees without wasting time in debates etc This stands in sharp contrast to the practice as it prevails in the United States of America where there is neither a non-partisan and careful examination of the measures nor any relief to Congress Its great defect is its expensiveness The counsels who argue have to be paid high fees and the cost of bringing in witnesses has to be borne The advantages far outweigh the defect Those who seek certain privileges should be prepared to spend to procure them On the whole the scheme is sound and has been working well

Provisional Orders Confirmation Bill — The purpose for which a corporation or a company seeks to promote a private bill can, in some cases, be more easily realised by obtaining from the government department concerned an *order* allowing it to proceed with the work Parliament has passed many Acts pertaining to public health, railways, street railways, public lighting, poor relief, education etc , authorising government departments, such as the ministry of health, the home office and the board of education to grant to individuals or groups of individuals certain powers, where adequate cause for such grant can be shown. For example, if a local body wants permission to issue municipal bonds in order to finance a hospital, it approaches the ministry of health for it The ministry inquires into the merits of the application through its administrative officers, and if satisfied about its genuineness, issues an *order* permitting the applicant to proceed with the work The *order* thus takes the place of a private bill, it deals with matters which used to be dealt with by private bills before The result is that the quest for private bills has grown less, and the issue of *orders* has increased The order is however *provisional*, it cannot be acted upon until it has received Parliament's approval Hence it is termed *provisional* Several provisional orders are collected in the form of a bill, and the bill is introduced in Parliament on behalf of the government. The Act which confirms these orders is called Provisional Orders Confirmation

Act. Its passage through Parliament is not usually opposed If there is opposition in any case, the bill is referred to a select committee. The chances of its being defeated are however negligible It should be noted that Parliament does not pay the same attention to such bills which they deserve Here is an instance of Parliament assuming a task which it does not properly perform.

The Role of Cabinet in Law making — The foregoing account of the process of law-making at Westminster is as it would appear to an external observer, it does not bring into clear relief one very important and vital feature of the British system which distinguishes it from the American and the French practice, viz, the role of the Cabinet in law making In theory and form it is Parliament which legislates, the Cabinet comes nowhere in the picture In actual practice it is the Cabinet which legislates, the role of Parliament is confined to giving assent to whatever the Cabinet proposes, (subject, of course, to its power to modify the cabinet proposals) 'When we say that the House of Commons makes the law, we use language that no more conveys the fact than the legal formula, which tells us that every statute is enacted by the King with the advice and assent of Parliament New laws are made by the Ministry, with the acquiesance of the majority and the vehement dissent of the minority, in the House of Commons'* This passage clearly brings out the dominant role played by the British Cabinet in legislation. It has assumed the leadership and taken the initiative in legislation It determines what important measures shall be introduced into Parliament and in what order Whenever it has a majority, it is in a position to ensure that nearly all legislation for which it assumes responsibility shall pass into law in almost the same form in which it introduced it Nothing like this can happen in the United States or in France

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* Dicey—Law of the Constitution, pages 52—53

This dominance of the Cabinet has thrown the private member into the background His influence over legislation is little greater than that of a private individual outside His power to initiate legislation is confined to the right of moving his private member's bill whose chances of successfully finishing its passage through Parliament are meagre The standing orders of the House, its traditions and the theory of ministerial responsibility all conspire to make his voice largely ineffective so far as modification of the measures before parliament is concerned* We thus have the curious fact that in Great Britain quite a large number of the members of the legislature are not legislators or are *legislators only* on sufferance This is a very serious defect of the British system

Parliamentary Control over Finance.— The second important function of Parliament is to exercise control over national finance and act as its guardian It should be remembered that it was precisely the power of granting and withholding supplies to needy monarchs which enabled the House of Commons to wrest power from them and strengthen its own position Even to-day one of the bases of parliamentary supremacy is its power over the purse Whoever coined the phrase 'Who holds the purse holds power' uttered a very great *truth* *It is one of the fundamental principles* of the British constitution that the Crown has no power to tax save with the sanction of Parliament and no power to spend a farthing except with the sanction of the same authority Parliament is the sole and ultimate authority to determine what taxes shall be levied and how the revenues received shall be spent It must be remembered that in this context Parliament literally means the House of Commons. Control over finance

* It is not to be assumed that a measure sponsored by the government can never be defeated or substantially modified in the House of Commons Outright rejection of a government bill is, of course, rare for it would mean the resignation of the Cabinet particularly if the bill happens to be important, but some bills do undergo substantial modification in both the chambers

is the exclusive privilege of the House of Commons, it does not share this power with the House of Lords It was the Parliament Act of 1911 which formally deprived the House of Lords of its right to amend money bills

The House of Commons has four distinct functions to perform in the sphere of finance In the first place it has to examine the estimates prepared by the government departments and pass every separate demand for grant In other words, it has to provide supplies to the government and to appropriate them to different departments In the second place it has to decide the ways and means to provide the necessary funds for the purpose, and determine what new taxes are to be imposed and old ones reduced or abolished In the third place, it has to scrutinise and examine the ways in which the funds granted by it have been spent Lastly, it has to see that the accounts maintained by the spending departments are examined and properly audited In performing the last two functions it reviews the entire financial situation of the nation In what follows we shall make an effort to examine the manner in which some of these highly important functions are discharged

It is not necessary for our present purpose to study how the estimates are prepared by the various spending departments We assume the task to have been done All that is necessary to point out is that from October onwards the departments are in consultation with the Treasury to which the estimates are sent The departments consider how much money they spent last year and how far the changes in government policy and natural factors like the growth of population will affect the figures for the next year Every proposal involving fresh expenditure is subject to approval by the Treasury, and no item can be added to which the latter objects The total of these estimates as finally approved by the Treasury and the sums required for Consolidated Fund services indicate the total expenditure for

meeting which revenues shall have to be raised. It should be remembered that items like the interest on the national debt, civil list (expenses of the royal household), the salaries and pensions of judges, the expenses of holding parliamentary elections and other charges on the Consolidated Fund are not included in the annual estimates, they are separately shown, and are not annually voted by Parliament. This does not mean that such expenditure is beyond the control of Parliament and is unalterable by it. It is authorised by Acts of Parliament and and can therefore be altered by it when occasion demands; it is not however put before Parliament for annual sanction like other items of expenditure which are matters of general policy and hence require frequent readjustment. The total amount of expenditure not subject to the annual vote of Parliament is about one third of the grand national disbursement. One more point may be noted. After all the estimates have been prepared and submitted to the Treasury, the Chancellor of the Exchequer may sometimes find it necessary to demand a general reduction in view of the estimated income for the next year. After having made up his mind he makes his recommendations to the Cabinet which after a full discussion authorises him to lay the estimates before Parliament with such modifications may have been agreed upon. The ultimate responsibility for the estimates is thus of the Cabinet and not of the Chancellor of the Exchequer. Any way, as placed before the House of Commons they come from and on behalf of the government.

It is one of the standing orders of the House of Commons and one of the fundamental principles underlying the British financial system that all demands for grants and motions for a charge upon public revenues (as well as taxation proposals) must come from the government. No private member can propose a new item of expenditure, increase expenditure on any head, or even alter the destination of a demand. All he can *do* is to *suggest* to the government to provide money for what he deems to be

necessary, or increase the grant on an item The government may or may not pay heed to his suggestion, and generally it does not But whereas a private member cannot move an increase in a vote or propose a new demand, the House as a whole has the right to reduce or to refuse a demand made by the government According to strict theory the strength of the House of Commons lies in its power to compel a minister or the government to resign by refusing supplies But the way in which the party machine works has reduced this power of refusal of supplies to a constitutional figment By its majority in the House the Cabinet can reject any proposal for reduction or refusal of grants to which it may be opposed In practice the control of the House over expenditure is ineffective There are several reasons for it, they shall become clear in what follows

After the estimates have been presented by the Chancellor of the Exchequer at the end of January or in the beginning of February, on a day previously fixed the House transforms itself into a Committee of the Whole for their consideration, and is generally known as the Committee of Supply Only 20 days scattered throughout the session are allowed for their scrutiny and voting upon them The resolutions passed by the committee of supply are reported back to the House for being made the bases of the Appropriation Act which defines in great detail how much money may be spent by each department for various purposes during the financial year.

The debates that take place in the Committee of Supply, or the House in Supply as it is sometimes called, on the various demands for grants made by the government can be made to serve two different purposes. The purpose may either be to bring the entire administration under review and determine whether it was working efficiently and economically or not. In other words the occasion may be utilised to exercise control over administration and effect economy in it. But the very short time allowed, *i e*, 20 days,

coupled with the general spirit of the debates, and above all the manner in which the accounts of the different departments are kept and their estimates prepared make it extremely difficult for the House to achieve this end Since the ultimate responsibility for administration is that of the Cabinet, it resists with its docile majority every attempt of the House to exercise control over administration As was admitted by a Permanent Secretary to the Treasury, 'the control of expenditure, in the sense of securing that the various public services are efficiently administered at a reasonable cost, was no part of the object which the (framers of the scheme of parliamentary grants) had in view '* The budget debates are rather used by the opposition party for the purpose of a wide-ranging review and general criticism of government policy and the airing of grievances which may be regarded as their other and main purpose The student who has ever read the budget debates of the Central Assembly in our own country should easily understand what happens in Great Britain The member who moves a reduction in the salary of a minister is obviously not actuated by the desire to effect economy or to improve efficiency, he uses the motion as a cover for attack on the minister's policy. 'They will move that the salary of the Colonial Secretary be reduced by £ 100/- in order to call attention to the policy that is being pursued in Keyna, they will not investigate the staffing and functions of the Colonial Office '† Such debates have their own value, they bring to light the differences between the government and the opposition and compel the government to expound and defend its own policy The opposition knows all along that in voting it is bound to lose ; yet the discussions go on because in fact the debate is more important than the vote Sometimes it happens that the opposition criticises but abstains from voting against the government

* Quoted by Ramsay Muir *How Britain is Governed* page 227.

† Ramsay Muir *Ibid*, page 229.

If the purpose of the budget debates is to effect economy, improve the efficiency of administration and bring it under the effective control of Parliament, the estimates and the accounts shall have to be prepared in a different way and the composition of the Committee of Supply altered The committee should split itself into as many sub-committees as there are administrative departments and each of them should deal with the estimates of one department The Committee of the Whole House meeting for 20 days in the whole session is obviously not a fit instrument for achieving the purpose

Almost simultaneously with the discussion on estimates the House has to consider the government proposals for the raising of sufficient revenues to meet expenditure And just as it is the duty of the Treasury to prepare an estimate of total expenditure on the basis of the estimates submitted by the various spending departments, so it is its business to prepare an estimate of the probable income for the coming year Nay, the Treasury is more directly and completely responsible for the estimates of revenues than for those of expenditure, for while the spending departments are not within it, the revenue departments are When the Chancellor of the Exchequer has been able to work up his plans to raise sufficient revenues to meet the demands and present a more or less balanced budget by proposing new taxes and shifting the burden of old ones in accord with the policy of the Cabinet, he presents the budget with a long speech to the House assembled as the Committee of Ways and Means This budget speech is perhaps the longest the House hears It is always interesting and occasionally startling, particularly when it announces some radical departure from the traditional canons of sound finance It is not merely an unfoldment of government plans for the next financial year, but also a review of the past year's income and expenditure, surplus or deficit. It accounts for deviations from the estimated income, and is something like a brief commentary on the national prosperity

A few days after the 'budget speech' the House meets as the Committee of Ways and Means and debates the various taxation proposals of the government Just as no private member may increase an appropriation or propose a fresh one, similarly he is debarred by the standing rule from proposing a new tax or enhancing the rate of a tax recommended by government All taxation porposals must come from the government All that the House can do is to accept government proposals, reduce or refuse them Though the government is usually able to carry its proposals through the House with its majority, it sometimes finds it necessary to meet the wishes of the House and accept the modifications suggested Ramsay Muir points out that the House of Commons *does* control the taxes that are imposed upon the country so far as the Cabinet allows it to do so. It has on occasions forced the Cabinet to withdraw bad and unpopular taxes The resolutions adopted by the Committee of Ways and Means and reported to the House of Commons are the foundations on which the Finance Bill is prepared It decides the taxes, both direct and indirect, to be levied during the coming financial year and the rates at which they are to be collected, and also specifies new or additional sources of revenue Just as not all the appropriations are annually passed by Parliament, similarly all the taxes in force need not be authorised every year Some of them like death duties, stamp duties and some custom duties are based on permanent Acts and continue from year to year, unless changed or modified by a new Act

The two great Acts, the Appropriation Act and the Finance Act based respectively on the resolutions adopted by the Committee of Supply and the Committee of Ways and Means, are sent over to the House of Lords after they have passed through all the stages and passed by the House of Commons The House of Lords is free to discuss them but has no power to amend or alter them Whether it accepts them or not they are presented to the

King for the Royal assent and, thereby, become the law of the land.

In our own country the annual budgets are presented to the central or provincial legislatures as the case may be in January or February and passed before the opening of the new financial year on the 1st of April The government is thus armed with the authority of law to collect taxes and spend money In Great Britain, however, the consideration of the estimates and the revenue proposals is never finished before the commencement of the new financial year, standing order 15 requires that the consideration of the estimates should be completed before August 5 But the work of government has to be carried on Accordingly the first thing which the House does is to pass various 'Votes on Account' giving the government provisional authority to withdraw from the Consolidated Fund sums sufficient to enable it meet its requirements till the budget is passed All the votes on account are lumped together in one bill which is passed early in the session

Essential Features of the Financial System — Before proceeding to discuss the way in which the House of Commons reviews the whole financial position of the nation and assures itself that the funds granted by it have been spent for the purposes for which they were meant, it seems desirable to draw the attention of the reader to some vital features of the British budgetary system Its great merit is that the whole financial programme has been prepared as a unit, the full responsibility for which rests upon a single authority, namely, the cabinet This essential unity of the system is due to several causes The final responsibility for both parts of the budget, the appropriation estimates and the revenue estimates, rests with the self-same authority, i e, the Chancellor of the Exchequer who works both of them into a co-ordinated fiscal plan Further, both the parts are considered by the same body, namely, the House of Commons sitting as a Committee of the Whole House under two different names The

fundamental principle that all demands for grants and all proposals for the raising of revenues must come from the government and the fact that no vital changes can be made in the budget without the consent of the government enable it to retain its essential unity. It is not possible for the British Parliament to change the budget into something very different from what it was as prepared by the executive, as is possible for the French Parliament and the United States Congress The fact that the ministers whose financial programme is being discussed in Parliament are always present there to explain and defend it on the floor also contributes to the same end There is a demand in the United States that the financial procedure of Congress should come a good deal near to the British plan which has been imitated by many countries in the world and has been regarded as a model by some of its admirers It has, however, its own defects Its coherence and unity are to a considerable extent due to the fact that the House of Commons has largely abdicated its control over finances in favour of the cabinet, its power over the purse is more a matter of form than a reality It has already been stated that the discussions on appropriations are not conducted with a view to economy and efficiency of administration, they do not turn upon the merits of the financial proposals but resolve themselves into a general criticism of the government policy. This means that the responsibility for checking extravagance falls on the executive and does not rest with the legislature It may also be pointed out that the 20 days' time allowed for a consideration of appropriation estimates running into millions of pounds sterling is utterly inadequate for the purpose Large sums of money are voted without any discussion on the last day This serious shortcoming of the British system can best be stated in the words of the Committee which inquired into the working of control over expenditure It reported that 'there has not been a single instance in the last twenty-five years

when the House of Commons, by its own direct action, has reduced, on financial grounds, any estimate submitted to it... So far as the direct effective control of proposals for expenditure is concerned, it would be true to say that if the estimates were never presented and the Committee of Supply never set up, there would be no noticeable difference "*

The need for some alterations in the system has long been felt, and once or twice select committees were appointed for suggesting the lines on which reform should proceed But not much came out of their efforts, and the conditions remain much the same as before Even the highly reasonable proposal that reductions proposed by private members should not be treated as amounting to expressions of no confidence in the ministry but as business proposals to be discussed on merits, has not been accepted.

Parliamentary Control over Disbursements.— The function of Parliament does not end with the passing of the Appropriation Act and the Finance Act ; it has further to see that sums collected by the Treasury under the different Acts are spent for pursoses approved of by it This is achieved in the following manner. All national revenues, whether collected under the Finance Act or under permanent Acts, are paid into the Consolidated Fund in the Bank of England Withdrawals from it can be made only by authorised agencies and for authorised purposes only. The Appropriation Act is the authority according to which the Treasury or the Paymaster General can withdraw money. Before any money can be transferred to the Paymaster General, it must be approved by the Comptroller and Auditor General It is the duty of this high ranking officer to see that all the complicated rules regarding the transfer and use of money are duly observed. He presents annually to Parliament an audited account together with his report in which it is shown that the sums

* Quoted by Ramsay Muir *ibid*, page 212

voted by Parliament have been spent on the purposes specified and not otherwise Before he makes the report he satisfies himself that the payments authorised by him were in accord with the intentions of Parliament and that they have been spent upon the objects to which they were appropriated It takes the Auditor and Comptroller General about two years to prepare his report This report is submitted to Parliament and is scrutinised by the Accounts Committee

The House as a Debating Assembly.— Law-making and control over finance are not the only activities of the House of Commons, it performs other important functions also The very etymology of the word *parliament* indicates that it is a place for talking or discussion Debates and discussions thus constitute a vital and significant activity of Parliament In a sense it is even more important than legislation and financial control because the initiative and responsibility in the latter spheres have passed on to the Cabinet, while the House still retains its freedom to discuss and debate every activity of the government It performs this function quite efficiently.

There are plenty of opportunities for the House to raise discussions Government motions for appropriation and the raising of revenues are made, as we have already observed, the occasions for a general attack on government policies The motion for adjournment of the House on any night may be used to start discussion on any matter of urgent public importance A member can ballot for the chance of moving a resolution on a Tuesday or Wednesday, provided the evening is not required by the government. Earlier in the session he can move an amendment to the Address in reply to the Speech from the Throne. Parliament would be a very dull place, indeed, if there were not numerous opportunities for debate and discussion.

The debates in Parliament serve a useful purpose They constitute the very life-breath of democracy as it works in a

country like Great Britain It is not too much to say that democracy would not survive in that country if there were no freedom of debate in Parliament Parliamentary debates compel government to make its policies public, they give it an opportunity to explain and defend them The fact that every government knows that it would have to publicly justify every important act it performs has a great influence on its policy. Their influence does not end here, the debates produce repercussions on public opinion outside parliament 'What is said and written about them in a thousand articles and a thousand speeches is the living material out of which the voters' choice is made'*

The debates on subjects connected with foreign and imperial affairs are more important than other debates, because in these spheres the House can exercise no such control through legislation or through estimates as it can over departments dealing with internal, social and economic problems They are concerned with momentous issues and questions of policy. It should be remembered that the debates in the House of Lords on these problems deserve as much attention as those in the House of Commons Deliberation and criticism are not the exclusive privilege of the lower chamber like the control of finance

The Selective Function of the House — Sidney Low has drawn attention to another function of the House of Commons which is not legally recognized, but is of great significance and interest The House is 'a place where men are tested for practical statesmanship, and where they are sifted and selected' To understand and appreciate this function we should compare the House of Commons with the Indian National Congress Persons of all sorts and of all degrees of ability and intelligence join the Indian National Congress, but not all of them reach the same heights of power and influence Those who show certain

* Laski *Parliamentary Government in England* page 156

qualities of character and a certain degree of intelligence make a mark for themselves, first in the town or the district and next in the provincial sphere If they possess the requisite talent and capability, they can become all-India figures and become the leaders of the nation In the Congress a process is going on which enables persons endowed with the qualities of leadership to come to the top and pushes the smaller men to the bottom In a similar manner the House of Commons is the field where men are trained and tested for leadership There is hardly any Indian political leader of repute who did not make his mark in the National Congress, similarly there is no great English statesman and politician who did not rise to fame and power in the House of Commons. The floor of the House of Commons is the battleground where any man may fight his way and win the prize it sets before competitors.

Of course the qualities which enable a person to rise to eminence in the Indian National Congress are not the same which would help him to shine in the House of Commons ; there is bound to be some difference on account of the difference of environment and national temperament. It may, however, be said that strong character and a vigorous personality are necessary everywhere Mere oratorical excellence and talent for debate do not suffice. The house would listen with greater attention to a comparatively poor speaker who seeks to say something which he considers to be significant and which he feels deeply than to an orator who speaks merely to bring his name before the public The clever man who tries to score points does not shine. The capacity for evoking the sense of trust which transcends the division of parties is a very important quality. Such qualities are possessed by few, and few rise to cabinet ministership and prime ministership

Sir John Seeley described the House of Commons as the government-making organ Professor Laski also holds that the primary business of the House is 'to make a government to whom,

so long it gives that Government its confidence, it is prepared to entrust that initiative' It is not quite correct to describe the House as a government-making organ; strictly speaking it does not make any government. It has the power to throw a government out of office but it hardly exercises it. What Laski says is more correct; at the present time under the bi party system the House keeps in power one government and entrusts all initiative to it. But however adequate it may be as a description of the present role of the House of Commons, it cannot be accepted as the statement of what its function ought to be The House should primarily be regarded as the agency for exercising control over government on behalf of the nation as Ramsay Muir contends Of course it is also a deliberating chamber where national policies are discussed and decisions arrived at It is also a ventilating chamber where attention is drawn to grievances and redress sought This however does not mean that it is not and ought not to be an agency to exercise control over government on behalf of the nation That it does not exercise this control in any effective manner is no ground for denying the truth of the assertion

Administrative Legislation.— The foregoing account of the functions and powers of the House of Commons and its legislative and financial procedure would remain incomplete without a few words about what is known as Administrative Legislation The practice is of continental growth but is rapidly developing in Great Britain The complexities of modern society render its growth inevitable It has become very difficult for any legislature, however diligent it may be, to find time to supply all the detailed legislation demanded by circumstances. There are also matters of a complicated and technical nature which can be dealt with intelligently only by experienced administrators The practice of couching statutes in general terms and leaving the task of elaborating them to administrative authorities is thus being increasingly adopted This power given by Parliament to

administrative departments to make rules and issue orders and regulations consistently with the purposes of an Act and by means of some clauses in the Act is called *administrative legislation*. The number of Acts passed by Parliament conferring this power is rapidly increasing. In one particular year 60 out of 102 Acts, and in another year 26 out of 43 Acts contained clauses conferring this delegated power on a number of departments. Poor relief, public health, factory inspection, transport and education are the fields where this type of legislation is widely used.

There are some limitations within which this power can be used No order issued under an Act can go beyond its bounds or be inconsistent with its provisions The departments, however, sometimes twist and stretch the clauses of an Act to find justification for the orders they might like to issue. There are two safeguards against misuse of this power by a department. In the first place all such orders and regulations have to lie on the table of the House for a prescribed period It is open to any member to take objection to them and initiate discussion The House can modify or annul them In this way the supreme authority is still of the House But it is nobody's business to call attention to them, and the prescribed period is allowed to elapse without objection being taken In some cases the orders become effective at once, but may be invalidated if an objection is made and upheld by the House at a later time. In the second place, they can be invalidated by a court of law if the matter is taken to it by an aggrieved party, and it finds that the authority issuing any particular order has misused its power The Provisional Orders to which reference was made on a previous page in another connection come under the category of administrative legislation

CHAPTER VII

The Legislature (Contd.) : The House of Lords

Introductory.— We now turn to a study of the second chamber of the British Parliament— the House of Lords It is the oldest legislative body in the world, being in fact older than even the House of Commons which has out-stripped it in prestige, power and influence It is the descendent of the Great Council of the Norman kings which itself was descended from the earlier Anglo-Saxon Witenagemot. Its origins thus go back to more than a thousand years during which period it had a continuous existence except for a brief interruption. It has passed through many changes. There was a time when it had all the powers of a parliament and the kings took counsel with it on all matters of moment ; but, now, inspite of its increased size, it is a mere shadow of its former self, having been reduced to the status of a *secondary* chamber. Interesting though the story is, it does not fall within the scope of this chapter to go into the various stages of its history We shall content ourselves with an account of its present constitution, powers and functions, relation to the other house, and shall also briefly touch upon some of the suggestions for its reform

Its Constitution.— The House of Lords is the largest legislative chamber in the world and also the most hereditary. Its membership to-day is more numerous than that of the House of Commons, fluctuating around 780, though not even two centuries ago it was only 339 An overwhelming majority of its members owe their presence in it to no better reason than that they happen to be the eldest sons of peers. It is its predominantly hereditary character that makes it an anomaly in a democratic constitution.

Membership descends from the father to the eldest son, and there is no way in which an unwilling recipient of this heritage can

avoid it O'd peerages rarely become extinct, and new peerages are created every year, the average for the last several years being between 10 to 15 This creation of new peerages every year accounts for its ever exploding size as well as for the fact that no definite limit is fixed for its total membership It is the prerogative of the king to create new peers on the advice of the prime minister The lavish scale on which peerages were bestowed upon persons in the decade ending 1922 gave rise to a storm of protest, and it was even alleged that the honour was being sold to wealthy persons for contribution to party funds A royal commission on honours investigated the matter but its report was not acted upon An Act was, however, passed in 1925 making it a misdemeanour to give or offer, take or ask any gift or money as an inducement to procure or as a reward for procuring the grant of a dignity or title or honour The creation of new peers thus still rests with the king acting on the advice of the prime minister, who of course consults his cabinet before making his recommendations Women are still ineligible for membership of the House

The members of the House of Lords may be grouped into six different categories There are, in the first place, *princes of the royal blood*, They are not more than three or four at a given time, and are of no practical importance because they very rarely attend its sittings and never participate in its debates To the second group may be assigned the *hereditary peers of the United Kingdom*. They form the most numerous group in the House constituting about nine-tenths of its total strength In 1936 they numbered 681. This group has become so large on account of the lavishness with which new peerages were created during the last hundred years or so They are all of them hereditary peers. The third group of members consists of the *representative peers of Scotland* These are 16 in number and are elected by all the peers of Scotland meeting as an electoral body In other words, whereas all the peers of Great Britain and United Kingdom are

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The fourth group consists of *Irish representative peers* There was a large number of Irish peers when Ireland was united to England in 1808 They were given the right to elect 28 from among themselves to represent the whole group in the House of Lords for life No elections have taken place since 1922 when the Irish Free State came into existence, and the number of Irish peers at present is not more than 15 The representation of Irish peers in the House of Lords will gradually pass out like that of the Scottish peers. It should be remembered that neither the Scottish nor the Irish representative peers are members of the House of Lords by heredity; they owe their seats to election The fifth group consists of 26 *Lords spiritual*. They are not peers at all, but are ecclesiastical members The archbishops of York and Canterbury, and the bishops of London, Durham and Winchester are always included among the 26 'Lords spiritual' The remaining 21 seats are filled from among the remaining 28 bishops in order of seniority Once a bishop is summoned to the House of Lords he retains his seat there so long as he holds a see. Naturally the membership is not hereditary To the sixth group belong the seven *Law Lords*, or Lords of Appeal They are selected from among the best jurists of the country, and unlike other members of the House of Lords receive an annual salary They hear appeals from the higher courts in England, Scotland and Northern Ireland and give their full time to judicial work. This is because the House of Lords is not merely a legislative body but has important judicial functions to perform

*No new Scottish peers have been created since 1707. Less than 30 of the old ones survive at present. When they die out, no Scottish peer will be left to elect the required quota of their representatives in the House of Lords, and this category will then cease to exist.

Their performance is entrusted to the Law Lords. They are *life* members of the House,

It would thus appear that some members of the House of Lords are elected from the constituencies of peers, some are appointed to it on the basis of technical qualifications, while about nine-tenths owe their seats to heredity.

Organization of the House.— Not much need be said about the organization of the House of Lords It has its own officers and its own committees like the House of Commons Its presiding officer is known as the Lord Chancellor who is always a member of the Cabinet. The House has no hand in his appointment. His powers are much less than those of the speaker of the lower house ; he has no disciplinary powers and cannot even determine which peer should have the floor of the house / Its sessions are coincideo' with those of the House of Commons, and it meets on Tuesdays, Wednesdays and Thursdays, and sometimes on Mondays also but rarely on Fridays A large body of peers are generally absent from its meetings and seldom take part in debates The persons who take an active part in its proceedings number about fifty and include men of outstanding ability They are persons who have held high and important offices of State as ambassadors, governors general, generals, or who have distinguished themselves in industry, finance, literature, journalism or other fields. The result is that its full dress debates are often distinguished in quality and sometimes reach a standard even higher than that of the lower house The rules of discussion are lax. Few questions are ever asked

The Powers and Functions of the House.— *Though the House of Lords has suffered a great loss of power during the last few centuries, its functions have not undergone any similar deterioration. It has always shared and still shares the legislative,*

deliberative and critical functions with the House of Commons. It had powers in the sphere of finance also, but they have been taken away by the Parliament Act of 1911. It exercises judicial functions peculiar to it which it does not share with the other house. We shall thus discuss its functions under three heads: legislative, deliberative and judicial.

(i) *Legislative Function* — We need not refer to the early days when the House possessed the sole right to advise the king in law-making or to a later period in which the consent of both the houses was considered essential for legislation. Until the passing of the Parliament Act of 1911 it was a co-ordinate branch of the legislature having the right of initiation, amendment and rejection on par with the House of Commons as regards all legislation, public and private. It could also discuss, amend and even reject money bills. In actual practice, however, few bills were introduced in the House of Lords since the centre of gravity shifted to the House of Commons; and the convention had also grown up that money bills could be merely discussed by it and were to be accepted or rejected without any alteration or amendment. The power to reject a money bill was not usually exercised.

At present the main work of the House of Lords in connection with non-money bills is confined to revision, criticism and amendment. It has almost entirely ceased to exercise the function of initiation. On account of the growing subservience of the House of Commons to the Cabinet and the increasing use of 'guillotine' to stop discussion there, the need for a thorough revision and criticism of bills passed by the lower house is all the greater. The fact that the House of Lords is less amenable to the cracking of ministerial whip makes it a fit instrument for revision. But its present constitution under which it is predominantly conservative in its composition and the fact that bills come crowding on it towards the close of the session make the

efficient discharge of this duty difficult. If the House is to discharge this function efficiently and successfully, it needs to be reformed, and its sessions so arranged as to give it sufficient time for revising bills sent to it from the other house (It is hardly necessary to remind the reader that the right to initiate money bills is the exclusive privilege of the House of Commons He should also remember the provisions of the Parliament Act set forth on a previous page)

(ii) Deliberative and Critical Function — As at present constituted the House of Lords is perhaps more useful as a deliberative assembly than as a legislative body The presence of many men of eminence and experience who can speak with authority on foreign and imperial affairs makes its debates on issues of broad national policy rank with the best in the lower house, and sometimes even as superior to them They are generally of a high quality and are conducted in a calmer atmosphere and leisurely manner, and are less liable to be swept by temporary gusts of passion The House devotes more time to debates on motions than to debates on bills

If it is the function of the House of Commons to exercise control over the government on behalf of the people, it can be asserted with equal justification that it should be the function of the House of Lords to exercise similar control on behalf of the 'higher people' But it is not in a position to perform this function with any appreciable success, because it does not possess the power over the purse and the government is not responsible to it / It can, however, criticise the government, and is in a position to 'hamstring the programme of a Government by delaying their passage for the first two years and postponing it in the last two for a period that the hazards of public opinion at the polls may well render indefinite"*

* Laski *Parliamentary Government*, page 115.

Judicial Function.—In addition to being a legislative body the House of Lords is a court of law also It is the supreme law-court for Great Britain, her final court of appeal It should, however, be remembered that the House as a whole does not participate in this work, it is done by the Lord Chancellor and the seven 'law lords' who constitute one of the six groups into which its members can be divided Only such other members of the House as have held or hold a high judicial office can participate in its judicial work It would thus appear that the House of Lords sitting as the supreme court is quite distinct from the House of Lords functioning as a legislative chamber. The former sits in the morning before the latter begins its work There is no reason why the two functions should be combined together, but there they are Even the Parliament Act did not take away the judicial work from it

The judicial functions of the House of Lords are in part appellate and in part original As the supreme court of appeal it hears appeals in civil and criminal cases from the highest tribunals of England, Scotland and Northern Ireland. As the court of the first instance it had the right to try its own members, but this right has been taken away from it But it can still try peers accused of felony or treason. It also has the power to try persons impeached by the House of Commons, but the practice has become obsolete now

Privileges and Obligations of Members.— Members of the House of Lords enjoy freedom of speech and freedom from arrest while the House is in session, and freedom from jury service A person who has once received summons to attend the House as a peer of the United Kingdom can always claim to be invited as a matter of right He transmits this right to his eldest son Every peer also has the right of individual access to the king though it is not exercised now. As has been stated above, every peer could claim to be tried by his equals, *i e*, by the House of Lords for offences committed by him, but this right was abused

and has now been taken away Leaving aside the Irish and Scottish peers who are not members of the House of Lords, no peer is eligible to stand for the House of Commons, and is not even a voter for it.

Relation between the two Houses.— The relationship between the two Houses has not always been the same; it has varied with time From the time they began to sit as two separate houses, they had, in law, equal powers. At an early date it was admitted that the House of Commons should have chief power in the domain of finance which gave it superiority over the House of Lords But inspite of this vantage position, the House of Commons continued to be the *lower* House till about the end of the eighteenth century /In every aspect of government— legislative, critical of policy, formative of ministries— the House of Lords was superior to the House of Commons */ There were two main reasons for this phenomenon. Firstly, the House of Lords was filled with the landed aristocracy of the realm and was an august body, and most of the high offices of State were held by peers. Secondly, there was no constitutional challenge from the House of Commons, because about one-third of its members were the proteges of the peers, sitting for pocket constituencies from which they were nominated by their patrons The same social class dominated both the chambers and therefore there was no struggle for power between the two The real political struggle was between King and Parliament and between the inarticulate country and Parliament, but not between the House of Lords and the House of Commons. This state of affairs was disturbed by the great Reform Act of 1832 over which a conflict raged between the two chambers which ultimately ended in a victory for the House of Commons Since then, and with its pogressive democratisation, the House of Commons has been able to establish its superiority over the House of Lords which tended to become more and more

* Finer *The Theory and Practice of Modern Governments*, page 433.

something like a true *second* chamber "The House of Lords had to learn from the Duke of Wellington the unpleasant lesson that it must not resist when the "will of the people" was manifest, but must confine itself to amending or delaying objectionable projects of change, rejecting only those measures in which no great interest was taken by the English electorate, such as Bills for the redress of Irish grievances"* Nevertheless, in theory the House of Lords continued to enjoy equal and co-ordinate powers with the House of Commons until it precipitated a conflict with the latter and was reduced in theory to the status of a secondary chamber, which in fact it had become long ago in practice The circumstances which led to the passing of the Parliament Act of 1911 throw a flood of light on the mutual relation between the the two houses and, therefore, deserve to be described

It has been shown above that although the House of Lords enjoyed concurrent powers with the House of Commons in theory, in practice it had become a truly second chamber and that it could not resist the will of the people as manifested in the measures enacted by the popular chamber It seldom ventured to assert its political equality with the Commons and was therefore allowed to continue Had it tried to exercise the large powers it possessed in theory, it would have been reformed out of existence long ago Its strength therefore lay in its weakness// The moment it asserted itself and tried to put obstacles in the way of Liberal governments, the movement for the paring down of its powers gathered force and culminated in the great Parliament Act of 1911/ In 1909 it had the temerity to reject the taxation proposals of the liberal government of Mr Asquith which imposed heavier burdens on land and other forms of wealth The Asquith government resigned, appealed to the country, and was returned to power again The Lords yielded and passed the Finance Bill which they had previously rejected The Liberal Government did not want any repetition of the phenomenon, and so staked its existence on

* Ramsay Muir: *op cit* page 218.

the issue of curtailing the powers of the House of Lords. A second general election was held in 1910 almost entirely on the issue of the powers of the Lords, and the country once again supported the liberals. The Parliament Act of 1911 whose main provisions have been stated earlier was the result of a liberal triumph. In addition to depriving the House of Lords of its power to amend money bills and ending the legislative parity which it had enjoyed in theory with the House of Commons, the Act reduced the maximum life of Parliament from seven to five years. The Act did not make any changes in the composition of the House and also left its judicial powers in fact. It thus left the question of reforming the Lords unsolved.

Importance of the Parliament Act of 1911. — The Act occupies a very important place in the history of British constitutional development. It accomplished one of the greatest changes ever made in British history by deliberate enactment. It is, therefore, desirable to know what it has actually accomplished. It is sometimes alleged that it gave to the House of Commons full legislative supremacy. There is no doubt that it has made it legally possible for the House of Commons to place on the statute book every type of legislation without the concurrence of the Lords. A money bill is submitted for royal assent one month after its having been sent to the House of Lords whether it passes or rejects it. In respect to non-money bills the House has been given a suspensive veto in place of the absolute veto it enjoyed in the past. It can merely delay their enactment by two years at the most. If the Commons pass a bill thrice whithin two years in the same form, it shall be presented for the royal assent without the concurrence of the Lords. But though these provisions do rob the House of Lords of legislative parity with the Commons, they do not in practice give to the latter full paramountcy. It will be wrong to infer that the House of Commons invariably has its own way. It is not at all an easy matter to fulfil the conditions as laid down by the Parliament Act

By repeatedly throwing out a measure the House of Lords may be able to rouse public opinion against it, or otherwise compel the cabinet to modify it along lines acceptible to itself. As has been pointed out in the preceding chapter, it can strike a fatal blow at emergency measures. By preventing its enactment for two years the House of Lords may rob such a measure of its significance and worth. As Laski points out its ability to work mischief to a Labour Government is immense. The upper chamber continues to amend and sometimes even to mangle the bills passed by the Commons, and the latter is compelled by circumstances to accept the changes made by the other house with as good a grace as possible. This is particularly the case in regard to bills passed by the Commons within the last two years of its life because otherwise they will be postponed indefinitely. As before, the differences between the two chambers are resolved by mutual give and take. The enactment of the Parliament Act has not made much difference in practice. Its only achievement is that it registered in theory what had long been a fact.

Grounds of Dissatisfaction with the House of Lords. — The paring down of the powers of the House of Lords by the Parliament Act of 1911 has not silenced the voice of criticism against it, the main grounds of dissatisfaction against it still exist. As at present constituted, it is an indefensible anachronism in a democracy. Assuming for the time being that a second chamber is necessary for (*i*) the revision and examination of bills passed in the lower house which is obliged to act under special rules limiting debate, (*ii*) interposing so much delay in the passing of a bill into law as may be needed to enable the nation to express its opinion on it adequately, (*iii*) the initiation of bills of a non-controversial nature, and (*iv*) for the full and free discussion of large and important questions such as those of foreign policy, it can be maintained that a house of a more 750 members about nine-tenths of whom are hereditary members is the least suitable instrument for realising the aforesaid objects. Its predominantly hereditary character

and bloated size make it a fit target for attack The first makes it an anomaly in a democratic system, it provides a good basis for the witty remark, that while the House of Commons represents everybody, the House of Lords represents nobody. In the second place, while certain groups and interests like large landlords and big business are over represented in it, other sections of society like the middle class are either not represented at all or very scantily represented / This feature is closely connected with the fact that the House has become a fortress of wealth. There is no great national industry whose leadership is not represented in it on the political side. Thirdly, the House has lost its bi-partisan character, it is largely wedded to the principles and policies of a single political party When a Conservative government is in office, the House performs its work of revision and criticism very well, but when the Liberal or the Labour party is in power 'there sweeps into view its character as the "common fortress of wealth" It becomes the reserve power of the Conservative Party, determined to correct the consequences of a progressive victory at the polls, so far as lies in its power'.* This is perhaps the most serious charge to be levelled against it Fourthly, its prestige has been largely undermined by the fact that a very large proportion of its members do not take their work seriously; most of them are generally absent. Its normal attendance is about thirty-five, and in the course of two decades there were only thirteen occasions when the attendance rose to more than two hundred Added to this is the fact that most of the new peers bought their seats for money contributed to party funds It should also be noted that when the House of Commons was being democratised, the House of Lords stood still and retained its hereditary and aristocratic character In consequence it continued to be the bulwark of conservatism, hostile to forces which menace the established order, and identified itself with agencies which

*Laski, *op cit* p 114.

seek to perpetuate aristocracy. Obviously such an institution can not but evoke criticism on the part of the democratic elements

Proposals for Reform — Since the time the consequences of the great Reform Acts of 1832, 1867 and 1884 became apparent, the question of reforming the House of Lords has been engaging the attention of British statesmen Proposals have been made from time to time they have generally been in the direction of (i) denying the claim of hereditary peers to govern and (ii) admitting the validity of the representative principle The first such attempt was made as early as 1869 when Lord Russell's Bill provided for the creation of *life peers* upto the maximum of 28 It was defeated Lord Rosebery made another attempt in 1874, and Rosebery and Salisbury together, in 1888 Nothing came out of them The next attempt was that of the Asquith Government which resulted in the Parliament Act of 1911 This Act was declared to be only a stage towards more fundamental reforms and confined itself to immediate tasks The Preamble to it reads as follows : 'Whereas it is intended to substitute for the House of Lords as it at present exists a second chamber constituted on a popular instead of a hereditary basis, but such substitution cannot be *immediately* brought into operation.....' But it was not before 1917 that steps could be taken to implement the promise contained in the preamble, when a representative committee presided over by Lord Bryce was appointed to suggest reforms The Committee went into its work *thoroughly* and submitted its report in 1918 With a view to the maintenance of continuity between the reformed and the present House of Lords, and in order to provide representation to major political parties and make it accessible to all the citizens, it suggested the following : (i) its strength should be reduced to 327 , (ii) 81 of the members should be elected from among the whole body of peers by a standing joint committee of the two houses , (iii) the remaining 246 members should be chosen by members of the House of Commons arranged

into 13 groups, each group being asked to choose its own appropriate quota. All the members were to be elected for a term of 12 years, one third of each of the two main groups (81 peers and 246 members elected by the 13 electoral colleges) retiring every four years. No single House of Commons was to elect more than one third of the 246 members. The whole scheme was thus to be put into operation by degrees; but it was never translated in action. In 1922 Mr Lloyd George submitted to the House of Lords a number of resolutions embodying some of the recommendations of the Bryce Committee report, but they also were put in cold storage. In 1929 Lord Cave submitted another scheme to reform the House of Lords in order to strengthen it against the House of Commons. It met with stiff opposition from all sides. Lord Clarendon introduced yet another scheme the same year but it also failed to win approval. In December 1933, Lord Salisbury introduced a bill providing for the reduction of the members of the House of Lords to 329, 150 of whom were to be hereditary peers, 150 to be elected from outside the peerage, and the rest to be Royal Peers, Law Lords and a few ecclesiastics. It sought to give greater powers to the House of Lords by providing that if a measure was rejected by it thrice by an absolute majority of the whole house, the decision should rest with a new House of Commons. The bill did not reach the final stage.

The question naturally arises as to how it is that inspite of so many attempts the House of Lords has not yet been reformed. The chief reason for this failure is the inability of the various parties to agree among themselves as to the principles on which it should be reformed. Almost all Britishers are agreed that the House needs reform, but wide differences make themselves manifest as soon as the question is mooted: What reforms are to be introduced? The Conservative party wants to restore to it the power snatched away from it by the Act of 1911, because

it is the only and the most effective weapon wherewith it can fight a socialist government It regards socialism as a highly dangerous thing and therefore desires a strong second chamber powerful enough to prevent socialistic measures from being placed on the statute book The Labour party, speaking generally, wants to abolish it altogether it regards it as a reactionary chamber, as a 'fortress of wealth', and therefore a serious obstacle in its way At its annual conference held in 1934 it formally adopted a resolution for its abolition One of the members in the course of his speech remarked that the House of Lords was an institution which could not be reformed or amended ; it could and must be ended / Whatever remains of the Liberal Party stands for (i) the reform of its membership so as to destroy its hereditary character and (ii) the continuation of the restrictions imposed upon it by the Parliament Act The House has therefore endured so long because the British statesmen could not agree upon something to take its place. But whenever Labour feels that its position in the country is strong, it may ask for a mandate for the abolition of the Lords and an improvement of the procedure of the Commons Into the question whether it is desirable to abolish the House of Lords or not we need not enter here We may simply note that it is so deeply rooted in British history and character that it would be no easy matter to abolish it Its functions as a 'senate' on which Sidney Low has laid stress are important and useful, if it were abolished, something would have to be put up in its place It would be more in accord with British tradition and current practice to reform it in such a manner as to destroy its overwhelmingly hereditary and conservative character

CHAPTER VIII

Parliament and Government

Introductory — In the preceding few chapters we have described the constitution and working of two important organs of the British Government— the executive and the legislature—, and also briefly referred to the relationship existing between them In view of the importance of the subject we propose to discuss it at greater length here, even though it may involve a little of repetition

The Theoretical Supremacy of Parliament.— In the British constitution the legislature and the executive do not occupy a position of equality as they do in the constitution of the United States of America , to the former is assigned a definitely superior status The sovereign authority of Parliament is one of the basic and fundamental principles of the British constitutional theory. It can be interpreted in two ways According to Sir Edward Coke it signifies that the power and jurisdiction of Parliament cannot be confined within any bounds either for persons or causes. The legislative authority of Parliament extends to all persons, to all places and to all events within the British Empire. Sir Edward wrote before the passing of the Statute of Westminister which declares that no Act of Parliament can extend to any Dominion unless it is expressly declared in that Act that the Dominion has consented to its enactment Even before the Statute of Westminister was passed the transcendent and absolute authority of Parliament existed in theory only, it had no relation to realities We are not interested in this interpretation of the principle here ; our concern is more with the other meaning according to which Parliament is regarded as the *supreme* organ of government in Great Britain According to strict theory

Parliament enjoys sovereign powers* As sovereign body it is credited with absolute control over all legislation and taxation and expenditure, and is also expected to exercise control over the entire administration through its servant and instrument, the cabinet It is supreme because the government is accountable to to it for every act , because it can compel the latter to resign by refusing supplies The supremacy of Parliament over the executive is involved in the very nature of cabinet or parliamentary form of government The Duke of Devonshire gave a classical expression to this theory of parliamentary supremacy in the following words 'Parliament makes and unmakes our Ministries, it revises their actions Ministers may make peace and war, but they do so at pain of instant dismissal by Parliament from office , and in affairs of internal administration the power of parliament is equally direct It can dismiss a Ministry if it is too extravagant or too economical , it can dismiss a Ministry because its government is too extravagant or too lax †)

The authority of Parliament in practice — Such is the theory of the absolute and sovereign authority of Parliament Facts however are against it, in actual practice Parliament has never been omnipotent, and it is certainly not omnipotent now Even in the heyday of its power its authority was not absolute, it was not quite free to do as it liked Its hands were tied by forces outside itself There was a period when its power was limited by the superior authority of the ruling monarch above it, and at the present time it has become subservient to the cabinet which has annexed many of the powers which nominally belong to it At all times it has been bound by its own precedents and traditions, and the pressure of public opinion has always been there to apply

* Parliament is a sovereign in the sense that there is no legal limit to its authority to make any law it likes There is no supreme constitution whose provisions it is bound to observe and obey, and there is no higher authority which can declare its acts unconstitutional See above page 89

† Also refer to page 75.

brakes to its activities The very multiplicity of the tasks it has undertaken puts limitations and restraints upon its capacity to perform them with a measure of efficiency The absolute authority of Parliament has hardly any existence outside text-books written decades ago What has been said in a previous chapter about the way in which Parliament makes laws and controls national finance should suffice to give the reader a fair idea of the very limited role it plays in the two spheres in which it is alleged to exercise transcendent authority In legislation the initiative and leadership have passed completely into the hands of the cabinet The cabinet not only decides what measures are to be introduced in Parliament and the order in which they are to be dealt with, but is also responsible for the preparation of their drafts "It explains, defends, and pilots them successfully through all the stages in their parliamentary career." There is hardly any chance for a private member's bill being placed on the statute book unless it receives government support " It is not thus untrue to say that Parliament does not initiate or make laws, its role is confined to giving assent to whatever is proposed by the cabinet (subject of course to such alterations and modifications as the cabinet may be induced to accept). In this connection it is interesting to note that it is the cabinet and not Parliament which is praised or blamed for good or bad laws" In the eyes of the public the responsibility for legislation lies with the Cabinet and not with Parliament. In the sphere of finance the control of government is even greater, the financial proposals as put forth on behalf of the cabinet can be modified against its will only by defeating the government which is an almost impossible phenomenon "The power of the House of Commons to dismiss a ministry by refusing supplies is a constitutional figment."

Parliament has lost to the cabinet not merely in legislation and finance but all along the line It is not capable of exercising proper control over the government on behalf of the nation It should be remembered that it is not its function to govern the

country and assume direct responsibility for administration, these are the concerns of the cabinet It does not determine how the various departments shall be organised and how large their staff shall be, and it does not control appointments and dismissals It is however expected to examine the work of administration and satisfy itself that it is being efficiently and economically done, and that the orders and regulations issued by the departments under authority delegated to them by Parliament are proper and valid On account of the growing 'dictatorship' of the cabinet, the growth of bureaucracy, and several other factors among which may be included the way in which accounts are kept and estimates presented and discussed in the House of Commons, Parliament finds itself handicapped in the discharge of this highly important function Its control over administration is highly ineffective The only means at present open to Parliament to keep the ministers and their subordinates upto the mark are questions, debates and discussions on government resolutions, motions of adjournment and no-confidence Unfortunately they do not take it far enough in the direction of furnishing that amount of inquiry and criticism which is necessary for exercising effective control The cabinet has grown powerful at the expense of the House of Commons.

There is another way also in which it can be proved that the authority of Parliament cannot be absolute under the present conditions, that the supremacy ascribed to it is theoretical and not factual As was pointed out in Chapter VI, for all practical purposes the House of Commons is Parliament, the authority and power of the latter can never be greater than that of the former An examination of the manner in which the House of Commons transacts its business clearly shows that whenever the government has a majority in it, its power is the power of the government itself Since the latter can never be absolute, the former also must be equally limited Behind both the government and the House of Commons stands public opinion to limit and

restrain their activities One may therefore say that it would be nearer the truth to talk about the diminishing and limited power and importance of Parliament to-day than to assert its omnipotence and sovereign authority If the principal change effected since the Revolution of 1688 was the 'virtual transfer of the centre and force of the state from the Crown to the House of Commons', one might as well hold that the most significant development in British constitutional practice made since 1932 is 'the tendency to shift this centre and force from Parliament to the Cabinet and to render the latter amenable to the control of the constituent bodies themselves rather than to that of their elected representatives '* The increasing dominance of the cabinet is perhaps the most important simple political development of the last half a century Many consequences have flown from it, the more important of which are noted below

Merits and demerits of the Cabinet domination over Parliament.— In the first place it has given to Parliament a highly integrated leadership in legislation, which stands in sharp contrast to the divided and precarious leadership found in many European and American states The legislative programme of Parliament is drawn up by the cabinet every session and pushed through with the help of its majority. It cannot be side-tracked or mutilated as is possible across the Channel or on the other side of the Atlantic. Secondly, it has impressed upon the British financial programme a great unity and coherence. This point has already been stressed † Thirdly it has contributed a good deal to ministerial stability in Great Britain which again is sharply contrasted with the rapid succession of governments in France These are certainly great advantages which England derives from the way in which the cabinet system is operating there They are, however, counter balanced

* Sidney Low, op cit page 22

† See above pages 147 ff

by some serious disadvantages. Great Britain is required to pay a fairly heavy price for the advantages she is deriving from the dominant position of the cabinet In the first place, it has meant a loss of spontaneity and independence on the part of Parliament in the exercise of its legislative and other functions entailing a decline in its prestige and dignity As the authority of the cabinet has increased, that of Parliament has decreased. In the second place, backbenchers do not take the same interest in the proceedings of the House as was taken by them before, there has been a falling off of their interest in what goes on This is due to several causes the most important of which is the feeling that the debates in the House are futile so far as the form and fate of the measures before it are concerned The average member realises that his influence on legislation is little greater than that of a private individual outside In this respect he compares very unfavourably with his compeer in the French Chamber of Deputies or in the American House of Representatives The latter retains his liberty of action to a far greater degree and can help turn the tide in debate or voting by his independent action The degree to which the private member of the British House of Commons has forgone his liberty of action is indeed amazing, it is not easy to find a parallel to it except in countries living under some form of dictatorship Another consequence of the domination of the cabinet is that law making proceeds not by the give and take of compromise, but by the cracking of the majority whip However strongly the opposition might feel on any point, it cannot compel the government to accept its point of view A Conservative Government can pass a bill making strikes and lock outs illegal in the teeth of opposition from the Labour group, and a Labour Government can socialise industry inspite of the vigorous opposition of the conservative bloc. There are no checks and balances in Great Britain to prevent the evils arising out of legislation by sheer majority votes The only check on the growing dictatorship of the cabinet is that of public opinion.

*Another consequence of this most important political develop*ment may be noted which is neither a merit nor a demerit of it. The main discussion of political issues has been transferred from Parliament to the press The cabinet responds more quickly to hostile criticism of its policies and decisions in the press than to the speeches delivered by members on the opposite benches in the House of Commons * In other words, the control of Parliament has been replaced by that of public opinion It has also given rise to the idea that decisions involving major issues of policy should not be arrived at without giving the nation an opportunity to express its opinion on them *at a general election.*

Causes of the Phenomenon — The chief cause of this shifting of the centre and force of the state from the House of Commons to the Cabinet is the increasing elaboration of party discipline and party rigidity necessitated by the widening of franchise, brought about by successive Reform Acts There were political parties in the country during the first half of the last century and even before it, but they had no elaborate and rigid organisation Candidates stood on their own merits, went down to their constituencies, preached their own doctrines and met their own expenses They were not pledged to support one government or criticise another under all circumstances There was a good deal of free and cross voting in the House of Commons Since governments did not have great majorities during that period, very much depended upon the debate and the government had to accept the verdict of the House of Commons. But all this is changed now Candidates are chosen and put up by the various political parties each of which places its own principles and programme before the electorate, and the voters give their votes not so much to the individual candidates as to the parties which are pledged to support through thick and thin. Party discipline has become so strict that a member cannot vote against his party however much he might differ from it on a given issue; he has to vote as directed by the whip or resign from the

party which usually amoonts to retirement lrom political life or the transference of allegiance to some other party Hence theie is no free or cross voting such as was common enough before the elaboration of the party organisation. Governments rely upon their majorities for overriding Parliament The result is that a cabinet resting upon a single party majority has nothing to fear from the House, the ministry is safe

The second factor which has powerfully contributed to the cabinet's control over the House of Commons is its power to dissolve the latter and appeal to the country whenever there is a difference between the two on an important matter The government is always in a position to coerce the recalcitrant members of its party into the acceptance of its views or be prepared for a dissolution of the House. Cabinet dictatorship does not exist in France where the cabinet does not possess the power of life and death over the Chamber of Deputies (and where party discipline is not so rigid) So long as the cabinet can wield this formidable weapon of dissolution, parliamentary control is bound to be largely unreal

Reference may also be made to another cause of the phenomenon The cabinet has assumed responsibility for every detail of administration, and it makes every criticism of administration or financial policy a question of confidence in the ministry and resists it by the entire weight of its party majority This stifles free discussion and prevents the House from exercising due control over administration Lastly, it may be added that the work the House of Commons is called upon to do is enormous, the House is over-weighted with its nominal duties, variety of work and interests The work falls into arrears and the House has to leave many things to the ministers

The extensive control exercised by the Cabinet on the House of Commons is unhealthy and undesirable. It puts too much power in the hands of a small number of persons and shapes into

majority despotism The House is rendered incapable of exercising that control over the government which is needed not only for the health and efficiency of administration but also for the preservation of real freedom and democracy in the country. It is not far from truth to hold that Great Britain is living under the dictatorship of the cabinet qualified by the fear of publicity and the pressure of public opinion

The Role of the Opposition — The account of the British Parliament as given in the foregoing chapters would remain incomplete without reference to the role played by the 'Opposition' in the British parliamentary system. For the proper working of the cabinet or parliamentary system of government *Opposition* is very essential; the stronger it is, the more wholesome is the check upon the government and the greater the spur to efficient administration It was pointed out above that one of the main functions of Parliament is to furnish the inquiry and criticism which are essential for putting the ministers on their mettle and keeping them and their subordinates upto the mark This duty is in the main performed by the Opposition The degree to which the Opposition is able to perform this most essential function is the measure of the extent to which democracy prevails in a country For the proper working of the parliamentary form of government the party in opposition is not less essential than the majority party which forms the government What made Fascism and Nazism and what still makes Communism opposed to Democracy is the absence of the Opposition party in the legislature It is one of the fine traditions of British constitutional theory and practice that the minority recognises the right of the majority to govern, and the majority admits the claim of the minority to criticise It is interesting to note that the minority in Parliament is not regarded as an enemy

of the government to be got rid of but as His Majesty's *loyal* opposition The word loyal indicates that it is accepted as an integral part of the system.

Since the Opposition occupies an important and vital place in the British system, it is necessary to understand clearly its true function It is sometimes said that its function is to oppose the government and turn it out It is generally understood to mean that it should attack the government on all possible occasions and hamper its activities to the best of its capacity in order to discredit and turn it out This is a wrong and harmful doctrine Its true function is to compel the government to formulate its policies openly and state their consequences precisely, and to give it an opportunity to defend them against hostile criticism by rational persuasion In other words, as stated above, it is expected to furnish that criticism which is needed to put the government on its mettle In order that this purpose may be achieved, it is necessary that Government should meet open criticism of its policies by argument and not by terrorisation and secret police The true role of the Opposition is best understood when it is regarded as an *alternative* government It is entrusted with the task of forming the government when, for one reason or another, the majority party is unable to assume office In Great Britain under the two party-system this can happen only when the electorate refuses to renew its confidence in the outgoing government It is very seldom that the opposition is strong enough to defeat the government on the floor of the House of the Commons All its efforts are therefore directed towards the conversion of the electorate A comparatively small turnover of votes at the next general election may suffice to put the Opposition in power It cannot normally hope to defeat the government so long as the latter has its majority. The government also in its own turn wants to capture the floating votes The struggle between the majority and minority parties is thus

not waged in Parliament but in the country at large. The majority party is compelled by the existence of the minority party so to behave as not to antagonise public opinion. In the absence of the Opposition this wholesome check will not operate and democracy will be endangered Opposition is thus not a nuisance just to be tolerated, but a definite and essential part of the constitution in Great Britain. Had it not been recognised as such, its Leader would not have been paid a salary of £ 2000/- per annum

CHAPTER IX

Political Parties and the Party System

Introductory.— Though constitutional law does not recognise political parties as a separate and independent organ of government, they are so inextricably mixed up with the working of the machinery of government in Great Britain that their discussion cannot be further postponed As was pointed out in the last chapter it is the elaboration and rigidity of party discipline during the last seventy or eighty years which has been mainly responsible for the growing domination of the cabinet over the House of Commons. It has thus made a profound change in the relation between Parliament and Government and also between Parliament and people, and therefore deserves close attention and consideration

Role of the Party System.— A writer once described the British Parliamentary system as *perfected* party government. He perhaps used the adjective to draw attention to the difference between the operation of the party system in Great Britain and in other countries. Government by parties has been carried to much greater length there than in other countries, e g , France, Switzerland, the United States of America The very character of government and many of the constitutional conventions in Great Britain are determined by the nature of the party system 'It is the leadership of a *party* that gives to the Prime Minister his enormous power; it is common membership of a *party* that gives unity of character and aims to a Cabinet; it is the existence of an organised supporting *party* in the House of Commons that enables the Cabinet to carry on its work, and (when the party has a majority) endows it with a complete dictatorship over the whole range of government, and this dictatorship is only limited or qualified by the fear of those who wield it lest any grave

blunder may weaken the *party* in the country, and bring downfall at the next election time "* The entire character of the British governmental system would alter if, instead of two, there were three or more major political parties in the country necessitating coalition governments As it is, the party returned in a majority in the House of Commons forms the government from amongst its own adherents and wholly excludes members of the other party or parties. It is the constant business of the minority party (or parties) to continue the struggle in the House of Commons and in the country at large in the hope of converting itself into a majority taking the reins of government in its own hands The entire political life of the country is coloured and determined by the struggle between parties Each party uses all available means to organise the electorate and win its sympathy and support in the various constituencies Platform, press, processions and their like are freely used Such constant activities as are found in Great Britain are not met with in countries like France and Switzerland

Political Parties before 1832 — Political parties are not a new phenomenon, they are as old as humanity itself They are the outcome of the natural tendency of persons holding common interests and common views to unite for the furtherance of their common aims We thus find them existing under one form or other at all times and in all countries, *e g*, the Patricians and the Plebians in Ancient Rome, and the Guelfs and the Ghibelines in medieval Germany In England they appeared under such names as Lancastrians and Yorkists in the medieval period, Cavaliers and Roundheads during the Stuart era, Whigs and Tories in the first half and as Conservatives and Liberals in the latter half of the nineteenth century It is not necessary for our present purpose to trace their origins and development, we shall only call attention to two facts Parties as they existed till the

* Ramsay Muir *How Britain is Governed* page 116.

passing of the great Reform Act of 1832 were very much different in nature and organisation from what they are to-day. Prior to 1832 the opposition was between those who supported the prerogative of the Crown and those who sought to uphold the authority and supremacy of Parliament, similar to the opposition existing in our country between those who desire the continuation of foreign rule under which they prosper and flourish and those who aspire after national freedom Parties were not organised on economic grounds, they did not pursue rival policies and did not seek the support of the electorate for carrying them through In the second place before 1867, they were not so well organised as they are to-day, they had no central organisations to select and help candidates, and keep control over them in Parliament Candidates stood on their personal merits, canvassed for themselves, met their own expenses, and were free to align themselves on any side in the controversy over an issue in the House of Commons There was thus a good deal of free voting, and also of cross voting Individual members retained their liberty of action But now all this is changed Party organisations select and put up candidates, canvas for them, and make arrangements for bringing voters to the polling booths Candidates not attached to any party have no chance of success. On account of this great dependence upon party organisation for success in election, persons returned to Parliament have to forego their liberty of action and submit to party discipline which has become very strict It is important and interesting to see how this tremendous change came about.

Two factors have been mainly responsible for the development of elaborate party organisations and the increasing strictness of party discipline. One was the increase in the size of the electorate brought about by the Reform Acts of 1832 and 1867. The second was the emergence of two challenging and dominating personalities, Gladstone and Disraeli, at the moment when

franchise was extended to about a million urban working class members by the Reform Act of 1867.

It is easy to see how an increase in the size of electorate leads to a greater elaboration of party organisation and to stricter party control over the elected members. With every extension of franchise the difficulty of the task of helping newly qualified persons to get their names on the electoral roll, canvassing and bringing them to the poll, conducting the electoral campaign and meeting its cost is bound to increase. Individual candidates find it beyond their power to do all the work without external help A central party organisation is better fitted for getting all such work done through its whole-time salaried agents in different constituencies It provides literature and speakers to them, and also finds funds needed for the purpose Since the central party organisation foots the bill and helps the candidates, it naturally comes to have a greater say in the matter of their selection and finds itself in a position to exercise greater control over their behaviour inside the chamber. In this way the party organisation becomes increasingly elaborate and party discipline more strict We have a very good illustration of this tendency in our own country. The Indian National Congress and the Muslim League have well organised central and local organisations and keep their members within strict discipline In England the process was slower, almost insensible Into the various stages through which it passed it is not necessary to enter* It was greatly helped by the emergence at an opportune moment of two powerful personalities, Gladstone and Disraeli Instead of voting for individual candidates voters found it much easier to vote for candidates who could be counted upon to support one leader or the other through thick and thin In our own country also millions of voters vote for candidates not because they happen to be particular individuals but because of their respect and regard for

* Those who are interested in the topic would do well to read Ramsay Muir How Britain is Governed Chap IV

leaders like Mahatma Gandhi and Jawahar Lal Nehru The party leader naturally becomes an important figure during election time.

British Political Parties — Since Great Britain was the first country in modern times to develop responsible government, she also became the ancestral home of political parties as the term is understood to-day, *i. e.*, of groups of persons who seek to gain control of government by constitutional means in order to put into practice their conception of general welfare. The parliamentary system requires at least two major political parties for its working, the majority party forms the government and the minority functions as the opposition If a country has two and only two major political parties, the system is known as the bi-party system, if it has three or more of them, it is known as the multi-party system England has been the traditional home of bi partism, while in several countries of continental Europe the multi-party system has prevailed

Before the rise of the Labour party the struggle for power in Great Britain was between the Conservatives who maintained, though in a medified form, the earlier Tory tradition and the Liberals who may be said to have done the same for the Whig creed Sometimes one party was in power and sometimes the other With the emergence of the Labour party as a major group winning 142 seats in 1922, 191 in 1923, and 151 in 1924, the bi-party system collapsed In 1923 there were three major parties in the House of Commons with no one having an absolute majority The country had the novel experience of the Labour party forming the government but without a majority in the House of Commons. It could remain in office only so long as the Liberals were willing to lend it support. In other words the collapse of bi partism led to a minority government. The situation did not continue for long, in the next general election the Conservative party was able to get a majority and form a stable

government. It gained at the expense of the Liberals. In the elections of 1929 the story of 1923 was repeated, no party had an absolute majority The Labour party once again formed the government, and the Liberals held the balance of power The government was short lived, it was replaced by a national government in 1931. Since then the Conservatives ruled under the guise of National government The general election of 1945 has restored the old two party system, the Labour party, forming the government and the Conservatives constituting the Opposition The Liberal party was reduced to the status of a small group, and the guess may be hazarded that it shall be verydifficult for it to regain its old position of being a major party For all practical purposes, therefore, there are *two* political parties capable of forming the government in Great Britain On account of its historic importance the Liberal party cannot be omitted from any review of the British political parties In what follows we shall give an account of the main doctrines of all the three parties

The Conservative Party.— The name *conservative* is more descriptive of what the party stands for than the old name *Tory* by which it was known during the first quarter of the last century and prior to it It signifies that the party wants to *preserve* or *conserve* institutions, customs and ideas which have stood the test of time and have been respected for long The party has naturally disliked and opposed changes in the existing order. But since change is the law of life and nothing can remain static, conservatism means that change should be made cautiously and gradually, and only after the need for it has been fully established. This is the viewpoint of a person who has great respect for tradition and accepts vested rights and privileges as a part of the established order of things. This enables us to understand what kinds of persons and what social classes would support the conservative party and what the main objectives of the party are likely to be Taking the latter first, it may be said that on of

the chief things the Conservatives want to preserve and conserve is the structure of *capitalism*. The second thing they want to keep intact is the British Empire Among the political institutions favoured by them may be included the prerogatives of the Crown, the independence of the House of Lords, the privileged position of the Church of England, a powerful governing class, national unity, the freedom of private property from state interference, the interests of the big landlord and the industrial employer The reverence which the Conservatives have for the Crown and members of the Royal family is deep and profound They look upon it as the symbol of national unity and of the far flung Empire. They fiercely opposed the measure of the Liberal Government granting Home Rule to Ireland, and have always opposed the introduction of self-government in India and the colonies They are staunch imperialists in their foreign policy and strong advocates of imperial preference and armaments It is their faith and maxim that a strong British Empire is the best guarantee for world peace. They confidently believe in the need of a strong and privileged ruling class and hold that there are people who have the skill and the right to govern independently of the popular will. This is one of the reasons why the conservatives have always pressed for restoring to the House of Lords the powers which the Parliament Act snatched away from it.

From the above it is easy to see that the supporters and adherents of the Conservative party would be found among persons of wealth, title and social status. Most of the nobility and the country squires, landlords and industrialists, financiers and bankers, members of the Anglican church, a majority of university graduates, prosperous merchants and manufacturers, in short all those who feel that socialism would menace their interests are included in its membership The Conservatives control the press to a very large extent and thus are in a better position to mould and influence public opinion

developed soon into an assault upon the notions of a State Church and arbitrary government These have remained fundamental propositions in the latest history of the party, its new and radical elements of the nineteenth century supporting them from character and interest.' * Since 'openness to new experience and the vindication of free growth' constitute the essence of Liberalism, its creed cannot be stated so easily as that of Conservatism In general terms it may however be said that it attaches more importance to the individual than to the State, and holds that the goal of the latter is the production of perfect individuals in great numbers. It is thus led to put more emphasis on human than on vested rights. A Liberal is less wedded to tradition and is always more ready to change and alter the social and economic institutions to suit changing conditions of life He therefore aims at changing the existing conditions in government and in industry.

In the economic sphere the liberal policy was to give greater opportunities to the masses by encouraging industry and commerce It favoured freedom of trade and free competition The Liberals concerned themselves with the needs of small scale agriculture and business, and the betterment of the lot of industrial worker. In the sphere of foreign relations they were for giving larger rights to peoples within the Empire It was a Liberal ministry which proposed Home Rule for Ireland, so bitterly opposed by the Conservatives The Liberals may be described as 'the party of individualism, progress and emancipation', as opposed to the Conservatives 'who looked upon themselves as the guardians of rights which had become sanctified by tradition.'

Too much stress however should not be placed upon the differences between the conservative and the liberal creed. The opposition between them has been much softened since the

* Finer : *Theory and Practice of Modern Government* page 336.

emergence of the Labour party On the Irish issue Gladstone could not carry the whole party with him About a hundred liberals left him and joined the Conservatives to defeat the Home Rule Bill, and were thus responsible for the resignation of the ministry The alliance between the Conservatives and the seceding Liberals became permanent, and the Conservative party has since then been officially known as the Conservative and Unionist Party In the controversy between Capitalism and Socialism, the sympathies of the Liberals are more on the side of the former than on that of the latter They regard Socialism as dangerous to the liberty of the individual which it is their historic mission to preserve But while rejecting Socialism they advocate considerable reforms in Capitalism They are also prepared to socialise some industries if it can be proved that the step would increase efficiency Their contention is that the line between public and private enterprise is not fixed for ever, it has been shifted in the past and can be shifted again It is a question of practicability and convenience and not of principle This attitude brings them closer to the Conservatives than to the Socialists

During the days of its greatness and glory the Liberal party drew strength from a wide range It included members of the professional and commercial classes, urban middle class, of small shop keepers and tradesmen urban working classes and also a small proportion of agricultural labourers It never made any appeal to clergymen To day its membership has dwindled ; a large number of its supporters have joined either the conservative or the labour ranks The decline of the party is chiefly due to the fact that it has no clearcut and straightforward programme It tries to stand in the middle of the road between Capitalism and Socialism, believing in individualism for the rich and collectivism for the poor Such a policy does not appeal to many It has also suffered to a large extent from conflicts of personalities It has had no united leadership for long The electoral system

prevalent in Great Britain has also hit it hard, it has not been able to win seats in proportion to its voting strength in the country

The Labour Party.— While the Conservative and the Liberal Party are as old as parliamentary government in Great Britain and inherit and continue the principles and traditions of the Tories and the Whigs respectively (and of Cavaliers and Roundheads if we go farther back into the past), the Labour Party is of recent origin and came into being as a challenge to both the older parties. Though there were Labour members in the House of Commons before 1900, they did not belong to any organised party and their number was small. It was in 1900 that the party came into existence, and has grown rapidly since then. In 1906 it had a strength of 29 members, in 1910 of 40, in 1918 of 57, in 1922 of 142, in 1923 of 191, in 1924 of 151, and in 1929 of 289 members. It suffered a serious set-back in the elections of 1931 and 1935 on account of disagreement among its leaders. It however more than retrieved its position in the general election of 1945 when it swooped the polls and was in a position to form and run the government without the help of any other party for the first time in its history.

There is a fundamental difference between the policies and programme of the Labour Party on the one side and those of the Conservative and the Liberal Parties on the other. While the two latter parties advocate programmes within the structure and framework of a capitalist society, Labour envisages a new social *order based on Socialism in which public ownership shall replace* private ownership in key industries like transportation and mining. It gives the voter an opportunity to say whether he wants the old capitalist order to continue or desires the substitution of a radically new social order in its place. Immediate alleviation of poverty and unemployment is included in the party's programme, indeed, Socialism is the only permanent remedy for them. We may

thus divide the programme of the Labour Party into two parts, one intended to transform England from a capitalist into a socialist country, and the other directed towards the extension of social services A more equitable distribution of wealth and a rise in the standard of living for the masses are the natural corollary of Socialism The reconstruction of society on the economic side is bound to be accompanied by reconstruction on the political side as well Abolition of the House of Lords and plural voting, the election of a social parliament with full control over taxation, education, poor relief and other social services, alongside of the present political parliament, namely, the House of Commons, are a part of its political reconstruction scheme. It seems to have reconciled itself to the continuation of Monarchy.

In the sphere of foreign relations and imperial politics, the Labour party stands for the removal of economic causes of international rivalry, reduction of armaments, the nationalisation of the manufacture of armaments, promotion of international good will, and the strengthening of the League of Nations (while it was in existence) In the sphere of imperial policy it has consistently advocated self government for India, the application of the principle of trusteeship in Colonies and the development of self-government in them, and adequate safeguards for the native peoples against exploitation by European capital.

There are differences of opinion and cleavages among the ranks of Labour as among the ranks of the other parties in Great Britain There is a left wing and a right wing. Differences of opinion arise over the speed with which Socialism is to be introduced The party as a whole is agreed that the change from the present to the new social order is to be peaceful and orderly ; it is to be effected by constitutional means and not by a bloodly revolution But while the left-wingers want 'Socialism in our time', the more moderate section believes in the 'inevitability of gradualism' The right wing places emphasis

upon the extension of social services believing that success in social reforms will bring increased support The left wing thinks that socialisation of industry must be carried through rapidly if the social reforms are to be permanent

Originally the Labour Party found its main support in Trade Unions Its main strength has always come from the lower social and economic classes During the last two or three decades its social basis has been much widened Its membership now includes people drawn from diverse social classes It has found very great support among women enfranchised by the Act of 1928 Its leadership has, however, come mainly from the upper middle classes

Though it is the youngest of the major parties, in the elaboration of its organisation and the rigidity of its discipline it has exceeded the others The resolutions passed at its annual Conference, to which delegates come from every affiliated body, determine its policy.

Other Parties — Besides these three major parties— now practically two—there are a few minor parties also, the more important of which are the Communist party, the Fascist party and the Independent Labour Party The Communist is a small but growing party. Because of its alliance with Russia it is not looked upon with favour by the people Its efforts to secure affiliation with the Labour Party have always been fruitless The Fascists were led by Sir Oswald Mosley. The by election of 1931 showed that it had no prospects in the county The Independent Labour Party is even older than the Labour Party and may be regarded as its parent It was once affiliated to the Labour Party but it severed connection with it in 1931 because it did not think the latter to be sufficiently progressive and leftist Mr. Maxton and Mr Fenner Brockway were for long two of its important members

The *Present Party Alignment* — *From the above-mentioned* review of the party situation in Great Britain it is clear that the

legislature, it cennot wield the whip-hand but has to seek reasonable compromises and consider all elements in the framing of laws. This is not necessarily a defect, on the contrary, it may be a virtue, given favoureble circumstances Dependence on several groups introduces a necessery element of check or control on power which is absent under the two party system. Into further details it is not necessary to enter here, the reader who wants to pursue the topic further is referred to the works of Ramsay Muir and Laski, who represent the two opposite sides in the controversy

Party Organisation — As has been pointed out more than once in the preceding peges, party organisation has become highly elaboiate in Great Britain (and many other countries in the world) All the parties are organised in more or less the same way In eech case the party mechmery consists of two parts, one functioning inside Parliament and the other outside it The part inside Pathament consists of all the party members and is commonly known as the 'parliamentary party' It elects its own leader, a deputy leader and party whips The party outside Parliament consists of the party organisetions in the constituencies and the central organisetion An example from our own country will help the student to understand the organisation The Indian National Congress has its parliementary parties in the central and provincial legislatures, there is the Central Legisleture Congress Party with Shri Sarat Chandra Bose as its leader; there is the U P Congress Legislative Party with Pandit Govind Pallabh Pant as the leader, and so on in other provinces Eech such parliamentary group functions es a separate unit Then there is the U. P. Provincial Congress Committee with district and town and villages congress committees affiliated to it throughout the province. A member of the Congress legislative perty mey or mey not be a member of the P C. C There is elso the centrel organisation of Congress consisting of the Working Committee

and the All India Congress Committee The Congress holds its annual se-sions where the policy for the next year is determined and programme chalked out The parliamentary group is not subordinate to the organisation outside, but works in close co-operation with it, and is generally responsive to it. Similar is the case in Great Britain in regard to all the parties. Just as the Congress has its workers in the country, some whole-time and some part time, some paid and most of them unpaid, similarly every British political party maintains in each constitueney paid and full-time workers. There are of course, numerous honorary workers who do hard and tedious work simply because it is the work of the party in whose principles they believe Each party has a fund of its own to which members and supporters make contributions There are also other sources from which funds are obtained which do not call for comment here

Democracy in Great Britain.— The *foregoing* survey of the the Legislature and the Central Executive in Great Britain and of the relationship between them should enable us to answer the question, 'How far has the democratic ideal been realised there in practice'? In view of the almost irreconcilable opposition between the Russian conception of democracy and what, for want of a better name, may be called the Anglo-American or capitalistic conception, this question assumes a vital importance

According to Lincoln's definition which has become classic, Demoracy is the government of the people, for the people and by the people The Anglo-American view lays stress on the fact that it is government *by* the people, that in it the people govern themselves In practice this comes to mean majority rule The Russian view, on the other hand, is that democracy consists in rule in *the interests of the majority*, these interests being determined in accordance with Marxist philosophy. We need not stop here to examine which of these two views is the sounder one; we shall only try to discuss how far the conception of 'government by the people' has been realised in Great Britain, and in the

attempt some light may be thrown on the fundamental points of difference between the British and Russian views

There are several criteria for judging whether democracy prevails in a country or not The first is that all adults should have an equal share in the choice of the people who are to carry on the government Inspite of universal adult franchise prevailing in the country, Great Britain falls short of attaining this ideal in full measure As has been shown in a previous chapter the system of single-member constituencies and election by plurality of votes practically disenfranchise a large section of the voters and make the House of Commons unrepresentative of the people in one sense of the term Not until proportional representation is introduced there will this defect be overcome The presence of a predominantly hereditary House of Lords (which is sometimes said to represent nobody), which can delay almost indefinitely and surely for at least two years projects of social legislation introduced by a radical government, also makes the British system less democratic than it would otherwise be The absence of a chamber similar to the House of Lords which can act as a check on popular opinion expressed in the popular chamber makes Russsia more democratic than Great Britain

In the second place, a genuinely democratic government is always broad based on the consent of the people Government by consent does not mean that every citizen should approve of all the acts of government and that the government should never use force to enforce its laws against recalcitrant people , it only means that it should not use force as a substitute for consent, and if a majority of citizens disapprove of its policies, it should resign This implies that there should be ample opportunities for the citizens to know and criticise government measures, and freedom to all who wish to conduct propaganda and build up organisations having for their aim the displacement of the existing government by a new one by peaceful and constitutional means In other words, in a truly democratic government

there is always an Opposition which criticises the government and its policies and has full freedom to convert a majority of the electorate to its own principles and programme The British government satisfies this criterion while the Russian does not In Great Britain the government would not gag its critics or suppress them by force, but allows them to criticise it and tries to meet the criticism by arguments It also subjects itself to the people's judgement periodically In Russia the press, the platform and other means of propaganda are controlled by the government, and no opposition is allowed There is no free discussion there of government's acts of omission and commission Judged by this standard Great Britain is, while Russia is not, democratic.

But something more than majority rule, and the method of consent and free criticism is necessary if true democracy is to be realised The economic and social structure of society must be such as to permit really free discussion and real participation in the affairs of the state So long as the capitalist structure of society endures, those who own and control the means of production will continue to dominate the industrial and economic life of the community and wield great power in the political sphere also. Inspite of the forms of democracy, real power lay and still lies in the hands of a small section of the British society. The educational system, the method of recruitment to the higher ranks of the Civil Service, the influence of money at elections, and the fact that the press is largely monopolised and controlled by the rich, contribute to this end It is difficult for the propertyless wage-earner to have access to the seat of authority and make himself heard From this point of view England is not really democratic; even the advent of a Labour government does not make it really democratic The absence of private ownership of means of production and of the motive of private gain have enabled Russia to attain to a greater measure of democracy than England

CHAPTER X

The Judicature

Introductory — The maintenance of democracy requires not only majority rule, free consent and free discussion, but also a just and efficient working of law courts. Law courts not only declare to the citizens the laws according to which they are governed and help them in getting wrongs redressed, but what is more important, they make it clear to them that they are subject to rule of law and not to the whims of an arbitrary government. They discharge another important function also, they bring under law the use of force without which no government has existed and can exist. A sound legal system and a just interpretation and application of the laws of the land are thus indispensable conditions of democracy. We must therefore examine how far this condition is realised *in Great Britain. It is the business of this* chapter to examine the British legal system and its working.

Kinds of Law — The British system of Law is one of the foremost systems in operation in the world at the present time—the Roman and the Mohammedan being two others. Like her political system it is the product of a long process of evolution, and is mostly of indigenous growth. It has not been influenced *to any considerable extent by foreign legal systems. Another* important feature of the system is that it does not possess the coherence, orderliness and formal consistency so highly characteristic of the Roman system. This deficiency partly explains why it has not been adopted by nations like the Chinese, the Japanese and the Turks who have extensively copied from the French and other systems based upon the Roman system. Its third feature is that its content is drawn from three different *sources, (particularly to England as distinguished from Scotland* whose law differs from the English both in principles and

procedure) Three main kinds of laws are in operation in England, common law, statute law and equity The story of the rise and expansion of the *common law* is very interesting but cannot be retold here; we shall describe its nature only in a few words During the Norman and Plantagenet periods the people of England expected the Kings' Judges to administer justice in accordance with traditions which varied from one part of the country to the other It was a part of the judges' task to build out of these traditions a system of rules which would be common to the whole country These rules developed into what is to-day known as the Common Law It is thus nothing but the crystallization of usages or customs as interpreted by the judges. It was never ordained by the monarch or enacted by Parliament, but grew up mainly in an unwritten form, and has not been codified even till this day There is no text in which it is set forth in a comprehensive and authoritative manner. It is found in the recorded decisions of the judges delivered during the course of preceding centuries Of course, there have been commentators who have tried to arrange and elucidate its contents from time to time, but they were merely its expounders and not creators If any body can be said to have created it, it is the judges Common law is judge made law in so far as it is the product of their recorded decisions It has however the same force and validity as statute law. Britishers took their common law wherever they went, to America, to Australia and other Dominions, and guarded it as zealously as their flag

The second main kind of law administered by the courts in England is *statute law* In its origins it is as old as the common law, but whereas the latter *grew*, it came into being by enactment. In the beginning it was enacted by the ruling monarchs, first in their Great Councils and later on in parliaments. As parliament grew in power, the role of the king in law making diminished, until it became confined merely to the giving of assent The law-making authority, namely, the king-in parliament, makes laws

covering matters which the common law does not cover ; it can also change and alter any rule of the common law, enlarge or vary it, and even try to codify it Where common law conflicts with a statute law, the latter prevails Though statute law is growing in volume and cutting the common law more and more deeply, the greater part of the law administered and enforced by British courts is the common law This is because most of the rights individuals enjoy in England are based on common-law principles. Most of the statutes presuppose the existence of common law, and would have no meaning if the latter did not exist

Equity is the third great branch of English law What it is and how it is related to the other kinds of laws shall become clear if we explain how it came into existence In the good old days when the king was literally the fountain of justice, people who felt that they did not receive justice at the hands of his judges, petitioned to the king 'for the love of God and in the way of charity' to redress their wrongs Finding it difficult to decide all the petitions submitted to him, he appointed his chancellor to dispose them off As the work increased, some assistants were appointed to help the chancellor, and in due course of time a regular court known as the Court of Chancery came into existence The principles and rules according to which it decided the cases referred to it became the foundation of the law of equity Just as common law grew out of the decisions of the king's judges, in a similar way the judges who dispensed justice in the Court of Chancery built up the law of equity by means of precedents, traditions and maxims Equity is thus case-law and may be regarded as a species of common law. It was intended to remedy the defects of common law and correct abuses arising out of fraudulent transactions of persons resorting to it for their own purposes It has become highly intricate now It has nothing to do with crimes, and

is confined to certain types of civil controversies. It may be added that though equity has a procedure largely its own, it is no longer administered by separate courts. To-day there is no distinction of courts corresponding to the distinction between common law, statute law and equity

Reference may be made to the distinction between civil and criminal law There are civil courts to administer civil law and criminal courts to administer criminal law In either case a further distinction must be drawn between lower and higher courts dealing respectively with matters of less and greater importance There is no distinction in Great Britain between ordinary law and administrative law such as prevails in France and some other continental countries All citizens, high and low, private and government officials, are tried by the same courts and according to the same laws This is one of the implications of the 'rule of law' of which the Britishers are very proud.

Courts of Law.— The organisation of law courts is not the same throughout the whole of Great Britain There is one scheme of law courts for England and Wales, a different one for Scotland, and still another one for Northern Ireland In what follows an attempt will be made to describe the organisation as it exists in England and Wales

The courts may be divided into two categories: (*i*) the central or superior courts for the most part located in London, and (*ii*) local or inferior courts scattered throughout the country. They may be further subdivided into civil and criminal Civil courts deal with *private law*, in other words, with disputes between one private citizen and another The purpose of a civil suit is to obtain redress for a tort or wrong alleged to have been done to the plaintiff by another individual called the defendent; *e. g.*, for slander, trespass, breach of contract, infringment of patents A criminal court deals with breaches of *public law*.

In a criminal case the proceedings are always carried on on behalf of the crown, in other words the crown is always one of the parties to the dispute Murder, theft, arson, dacoity forgery are phenomena coming under the category of crimes dealt with by criminal courts Their function is to punish crime and not to redress wrongs

Coming to the judicial machinery, it should be noted that prior to 1873 it was highly defective and chaotic There were numerous tribunals, sometimes with over-lapping jurisdictions, and each having its own peculiar forms of practice and procedure Even a trained lawyer found it no easy task to tread his way through the maze. The reforms introduced between 1873 and 1894 have resulted in a complete overhauling of the machinery, the higher courts have been brought into the unity of a system and the procedure simplified a good deal

Taking up the criminal courts first, it may be pointed out that they form a hierarchy with the courts of the justices of peace at the bottom and the Court of Criminal Appeal and the House of Lords (sitting as a court of law) at the top In between the two are the courts of stipendary magistrates, the courts of Assizes and the Courts of Quarter Sessions A few words about each category are subjoined.

The courts of justices of the peace and of stipendary magistrates in larger towns are the lowest courts for trying criminal cases Justices of peace are appointed by the Lord Chancellor and serve in an honorary capacity They can be removed from office only when proved unfit for carrying on their duties There are about twenty thousand of such officers but not all of them perform judicial duties Those who do not take the oath required for qualifying themselves for judicial service number about half of the total strength The institution dates from the early fourteenth century and has played a notable part in the

development of local administration and justice A justice of peace can try only minor cases, *e g*, riding a bicycle without light at night and cannot impose more than 14 days' imprisonment or a fine exceeding 14 shillings In larger cities this work *is done by stipendary magistrates*

The next higher court is the Court of Summary Jurisdiction. It tries more serious cases, *e g*., of assault and theft. The case is tried without a jury and summarily, and if the accused is convicted, he is sentenced at once The sentence cannot exceed six months' imprisonment and a fine of 50 shillings.

Still graver offences involving 'indictment' are tried either by a Court of Quarter Sessions or by a Court of Assizes Quarter Sessions are competent to try all but the gravest offences—murder, treason, *forgery etc — whether with or without jury* This court is composed of all the justices of peace in a county who have taken the oath and are therefore eligible for judicial duty, and meets quarterly. It is not necessary for all the justices to participate in a session of this court; only two are sufficient to constitute the quorum Important boroughs have their own Courts of Quarter Sessions The procedure is the same as that of the High Court It has jurisdiction in civil matters also, and *entertains appeals from the courts of Summary Jurisdiction*

The Assizes are circuit courts held by the judges who go round the country on a circuit tour, *visiting all the county* and assize towns, and hearing and deciding civil and criminal cases For this purpose the whole country is divided into eight circuits or districts The Assize Courts try serious offences, and are held thrice a year in each county and four times in certain cities The accused is entitled to have his case heard by a jury

Until 1907 there was strictly speaking no appeal in criminal cases, though in some cases an appeal lay to the House of Lords. In the aforesaid year, however, a Court of Criminal Appeal

consisting of not less than three judges of the High Court was established A convicted person may now appeal to this court on a point of law, or of fact, or of mixed law and fact There can be no appeal beyond the Court of Criminal Appeal except in rare cases to the House of Lords The functions of the House of Lords as the highest court of appeal will be described at a later stage

Turning to the civil courts we find a similar organisation. At the bottom are the County Courts brought into existence by the Act of 1846 For the purposes of civil justice the whole of England and Wales is divided into nearly 500 districts or counties whose boundaries do not in any way coincide with those of the historic or administrative counties Each one of these counties has a county court competent to try cases involving claims of less than £ 100/ These courts are very popular, justice in them is cheaply, promptly and efficiently administered A statute passed in 1905 has enlarged their jurisdiction The county court is not a fixed court, it is somewhat like a circuit court The 500 counties are arranged into 55 circuits to each of which the Lord Chancellor assigns one judge This judge holds office in each of the districts of his circuit periodically Roughly speaking one circuit includes about ten counties Not all the cases registered in a county court are heard by the judge, because many of them are disposed of by an official known as the registrar of the court, by arranging compromises between the parties Appeals from the judgements of county courts lie to the High Court and to the House of Lords.

Civil suits involving sums above £ 100/- are taken to an appropriate division of the High Court,—to the Chancery division, the King's Bench division, or to the Probate, Admiralty and Divorce division When one of the parties is not satisfied with the decision, it may make an application to the Court of Appeal to order a new trial Beyond the Court of Appeal an

appeal lies on a question of law to the House of Lords. The Court of Appeal consists of eight Lord Justices of Appeal

Mention may also be made of another law court called the Coroner's Court Its function is not to administer law but to discover facts. The coroner who is usually a doctor or a lawyer and is appointed by the County or Borough Council, holds inquests when death has occurred without an obvious cause. Rules of procedure are lax and there has been a growing criticism of the way in which the coroner performs his functions.

The Supreme Court of Judicature.— The Supreme Court is the centre of the whole judicial system in England It was established in 1873, and enjoys both civil and criminal jurisdiction It has two parts, (i) the High Court of Justice and (ii) the Court of Apppeal. The High Court contains three divisions; (*a*) the King's Bench which has as its presiding officer the Lord Chief Justice and contains 19 puisne judges, (*b*) the Chancery Division which is presided over by the Lord Chancellor and contains six puisne judges; and (*iii*) Probate, Divorce and Admiralty Division with a president and four puisne judges Criminal matters go to the King's Bench, and civil actions to the King's Bench or Chancery Cases requiring the application of the rules of equity go to the Chancery. The Probate, Divorce and Admiralty Division handles a miscellany of problems. Judges of the King's Bench make regular tours of the country holding Assizes at certain towns where they hear appeals in criminal cases and settle such civil disputes as have not been taken to London

Appeals against the decisions of the High Court go to the Court of Appeal. The Lord Chancellor, the Lord Chief Justice, and the President of the Probate, Divorce and Admiralty Division are members of this Court though they do not generally attend it The work is performed by the Master of the Rolls and five Lord Justices of Appeal who are either ex judges of the High

Court or barristers of at least fifteen years standing Three or more members may hear an appeal On the criminal side appeals are heard by the Court of Criminal Appeal It is presided over by the Lord Chief Justice and a varying number of the King's Bench An appeal can lie to it only on a point of law

The highest court of appeal is the House of Lords, which for this purpose is not the whole House, but the Lord Chancellor, the Lords of Appeal or Law Lords as they are commonly known, and such other peers as have previously held any high judicial office It hears appeals from the Court of Appeal and the Court of Criminal Appeal, if the Attorney General certifies that a point of law of public importance is involved Its proceedings are quasi-judicial, the forms of procedure are mainly those of a legislature, and the proceedings are published as a part of the chamber's proceedings

Attention should also be called to another very important and high tribunal, the Judicial Committee of the Privy Council It is the ultimate court of appeal for cases coming from India, the colonies and the Dominions It also entertains appeals from ecclesiastical courts in England In its personnel it is not much different from the House of Lords sitting as an ultimate court of appeal for the country It consists of the Lord Chancellor, former Lord Chancellors, law lords, Lord President of the Privy Council, and a number of judges appointed from the higher courts in India and the Dominions Disputes between Dominions may also be referred to it It is thus the highest court for the British Empire But under the provisions of the Statute of Westminster a Dominion may shut out appeals from its courts to the Judicial Committee It may also be noted that, though a judicial body, it does not give its decisions in the form of judgments, they are delivered in the form of advice to the crown which is always accepted and given effect to in the form of 'Orders in-Council'.

Relation of the Judiciary to other Organa — We shall conclude our survey of the judiciary in England with a discussion of its relation to the executive, and the legislature

There was a time when the judicial organ was subordinate to the executive. The king was literally the fountain of justice; the judges who administered justice to the citizens were in fact and theory the king's judges, they were appointed by him and were responsible to him During the Stuart period the judges had become practically the handmaids of the executive But to-day the position is entirely different, the judiciary is virtually independent of the executive. The Act of Settlement gave to the judges a permanent tenure, they can not be removed except by an address of both the Houses Of course, the process of making the judiciary independent of the executive had started much earlier, the first step in the process being the abolition of Prerogative Courts in 1641 by the Long Parliament It is not necessary to trace its various stages We are concerned with the highly important and significant fact that England provides one of the most effective safeguards for individual liberty by making her judiciary free from all control by the executive

The relation existing between the judiciary and the legislature calls for a more detailed examination. The first point to be noted is the almost complete separation between the two. It is no doubt true that the House of Lords functions as the supreme and final court of appeal for Great Britain, but it should be remembered that the exercise of this judicial function is entirely distinct from its legislative work. The House of Lords sitting as the final court of appeal is practically a distinct and different body from the House of Lords as a legislative chamber For all practical purposes therefore there is complete separation between the judiciary and the legislature in Great Britain. The Legislature however continues to exercise its sovereign authority over the judiciary in two ways It can remove a judge from office for misdemeanour, and it can override the decisions of a law court

by amending the law. In an important case Parliament made the repetition of a particular judgement impossible by passing the Trade Disputes Bill in 1906 Another vital point has to be noted The British courts do not possess any power of judicial review as is possessed by the courts in the United States of America The American courts interpret the law and also determine whether the law is law, i. *e*, whether the legislature which enacted it was within its rights in passing it If a court finds that the legislature exceeded its authority in placing a law upon the statute book, it can declare the latter unconstitutional The American courts thus act as the guardians of the constitution. The British courts cannot perform such a function, they can only interpret the law but do not interpret and guard the constitution. They have no authority to entertain the question whether Parliament had the competency to enact a particular law The difference is due to the fact that the U S A has a federal government in which the written constitution is supreme There is no written and supreme constitution in Great Britain, which it is the duty of the courts to interpret and uphold

The high quality of British Justice — The British judicial system enjoys an enviable reputation, both at home and abroad, for its excellence and for the impartiality, promptness and independence with which justice is administered Its excellence is proved by the fact that its methods and procedure have been adopted to a large extent by other nations They have been almost as much influential in the world as British constitutional practices

Several factors have contributed towards its excellence and efficiency One of them is concerned with the broad principles on which the administration of justice rests Trials are always held in open courts to which public has free access, parties to a suit have the right to be represented by counsel, the burden of proof lies on the accuser, guilt or innocence is determined in accor-

dance with a recognised body of rules and maxims, in all serious criminal cases the accused is tried by jury, the judges pronounce their judgement in open court and give reasons for it; and appeals lie to higher courts on points of law. The fact that the rules of procedure adopted by the British courts are framed by a committee of experts consisting of the Lord Chancellor, seven other important judges and four practising lawyers, and not by the legislature as in the United States of America, also contributes to the same result. The rules of procedure are designed to make justice expeditious and sure. Appeals on questions of practice and procedure are uncommon, not more than one in two hundred. The integrity and independence of the judges, the high standards set by the legal profession, the fairness with which cases are heard and decided, and the fact that witnesses are not manhandled, are other factors which impart dignity, stability and excellence to the British system and make it one of the best in the world.

CHAPTER XI

Local Government and Administration

Introductory.— Local government is not something separate and apart from the political structure of a well-ordered state, but is an integral part of it It is indeed sometimes ranked as one of the *organs* of government Whether we accept this view or not, there can be no gainsaying the fact that local bodies exist in every civilized state and contribute a lot towards developing the spirit of liberty among the people, and to the successful working of free and democratic institutions As Henry Sidgwick pointed out, whatever educative value is attributed to representative institutions largely depends upon the development of local institutions It is therefore necessary to supplement the foregoing survey of the organs of British Government with an account of local government and administration in the country.

Its History — English local government is at once both older and younger than the central government Long before a strong centralised rule was established in England by William the Conqueror, Englishmen were accustomed to manage their local affairs in their parishes, hundreds, and shires Parishes antedate the Norman conquest, and counties and boroughs existed before Parliament came into existence During the Saxon and Norman periods England was a land of local institutions, the people were absorbed in their own affairs and did not feel much interested in what was happening beyond their borders But though older than the national government by hundreds of years, local government is also much younger than it Its present organisation is the result of a series of Reform Acts passed during the last hundred years or so Between themselves the Acts of 1835, 1888, 1894, 1929, and 1933 completely reconstructed the system as it existed in the pre reform days. The

Municipal Corporations Act of 1835 laid down the general scheme of local government for the boroughs which they retain till to day The Local Government Act of 1888 did for the counties what the Act of 1835 had accomplished for the boroughs It reorganized the administration of counties The District and Parish Councils Act of 1894 gave to the parishes their present system of administration It created and unified rural and urban districts in place of the numerous kinds of special districts such as burial, sanitary, and local improvement districts which were in existence before The Act of 1929 abolished or combined a large number of the districts created by the Act of 1894 and made new arrangements for the grant of subsidies to local bodies for the performance of social services out of national funds. It resulted in the increase of central control over local administration Finally, the Local Government Act of 1935 consolidated into a single statute the powers and functions of the different local authorities

As a result of these five Acts which constitute landmarks in the reform of local administration in England, there are now five principal areas of local self government in the country. They are the *county*, the *borough*, the *urban district*, the *rural district*, and the *parish* The whole country is divided into administrative counties (corresponding to the districts into which a British Indian Province is divided) Within a county more densely populated areas are made into urban districts and less thickly populated ones into rural districts. These districts are further subdivided into urban and rural parishes for the handling of affairs of the neighbourhood An area within a county which has received a municipal charter is known as a borough London has a special government of its own In what follows we shall describe the machinery of local self government in each of these several areas.

The County.— The county is the largest and most important area of local self-government and may therefore be taken up first.

As such it is known as the *administrative* county and is to be distinguished from the *historic* county There are 62 administrative counties and 52 historic counties The latter still serve as areas of judicial administration with their own justices of peace and also form constituencies for the election of members to the House of Commons, they have no relation to local administration at present, and therefore have no county councils or any other local body to administer their affairs Each of them has a lord lieutenant who is an honorary officer, and a sheriff whose duties are more or less perfunctory. The historical counties have no importance from the point of view of local government and administration

The Act of 1888 drew the boundaries of the present 62 administrative counties. In doing so the authorities largely followed the ancient counties except where they had to be divided to make convenient areas for local administration. The result is that though the two types of counties differ and have to be distinguished, their areas coincide in most, though not in all, cases. The county of London, for example, does not correspond to any historic county ; it cuts into four ancient counties It may be pointed out that the counties are not equal in area or population.

Every administrative county has a county council as its governing organ whose strength varies according to the population of the county It is composed of councillors and aldermen, and a chairman elected by them. The difference between councillors and aldermen lies in the way they are elected to the council and their respective tenures, and not in their powers and functions The aldermen are not directly elected by the voters like the councillors, but are chosen by the councillors from among themselves or outsiders, equal to one third of their number, *e. g.*, if there are thirty councillors, they would elect 10 aldermen An alderman is chosen for a six-year period, while the term of office of a councillor is only three years. For the election of councillors

the whole county is divided into a number of electoral districts each returning one member Vacancies caused by the election of councillors as aldermen are filled in the same way in which councillors are elected On account of his longer term an alderman has a little more prestige than a councillor, but not greater authority or wider functions *Half of the total number of aldermen* retire every three years, *i e*, at the time of each council election. The institution of aldermen is useful in at least a twofold way; it enables some members to acquire greater experience of council work, permits the county to secure the services of persons *possessing special knowledge but unwilling to stand the strain of* an election campaign The councillors and the aldermen sitting together elect a chairman generally from among themselves, but not necessarily so A council may pay to its chairman a salary, and to its members *travelling expenses when they do council work.*

Elections to the council are held once every three years at the beginning of March *Every voter is qualified for election* as a councillor, ministers and even peers can become members provided they are qualified to vote Strange as it may seem, municipal franchise in Great Britain is linked up with ownership or occupancy of premises or payment of certain amount of taxes. No one is entitled to get his or her name put on the voters list unless he or she owns or occupies some premises or is the husband or wife of a person owning or occupying a premise, or pays certain amount of taxes. There is thus no *universal* franchise for municipal elections in England as there is for parliamentary elections. Municipal franchise is narrower than national franchise, a person may be a voter for parliamentary elections but not for municipal elections

The council meets regularly at least four times a year It enjoys wide and varied powers, and performs useful and important functions *It supervises and controls the work of the* lesser local authorities functioning within the territorial limits of

the county and also performs a number of functions directly Among the latter may be included the preparation of the budget, the levying of certain taxes, the making and upkeep of the main roads and bridges in the county, the maintenance of asylums, reformatries, and industrial schools It is also the chief educational authority for the county, co-ordinating and supplementing the library service of the parishes, and responsible for organising elementary education in the rural districts It makes a general survey of the county from time to time and recommends alterations in the boundaries of local authorities While the districts and the boroughs within it do most of the work under the Housing Act, the county council has to see that the work is properly done, and may take over the work itself It also gives attention to agricultural development and the growth of industries It organises advanced education in agriculture and encourages the children of labourers to take advantage of it In short, one may say that it is the aim of the county council to make life in the countryside more varied and attractive, and to raise the standard of living of the agricultural worker In addition to its social services it has some duties in connection with the county policing

The council does not do all this work itself It is concerned with questions of general policy, the routine work of administration is done by a permanent staff It includes the county clerk, the treasurer, the surveyor, the health officer and a number of other functionaries All of them are appointed on merit and are not removed on political grounds. The reason for the great efficiency which characterises local administration in England is to a large extent due to the fact that the permanent staff is chosen on the basis of competence and is not required to play politics in order to maintain itself in office It must also be remembered that the councils make good use of committees Statute requires every council to have at least nine committees—, on finance, education, poor relief, public health, housing, agriculture, and maternity and

child welfare They are chosen by the council as a whole, and are responsible to it

The Rural District.— It is impossible for a county council to look into and meet the requirements of all the parishes within it in regard to sanitation, water supply and public health particularly For a more efficient administration of these and other subjects of local interest, a county council may organise a number of parishes in a group Such a group is called a rural district and is given a district council to manage its affairs. There may be several rural districts in a county Their total number is about 600

A district council consists of a number of elected councillors, whose number is determined by the county council and varies from district to district according to population Every parish with a population of at least three hundred is entitled to elect one member to the district council The central government use the district councils as their agents for purposes of the Housing Act The latter are thus authorised to acquire land and build on it. As sanitary authorities they have to deal with water supply, cleaning of streets and footpaths, sewerage and the removal of filth Roads not maintained by the central government or by the county council are generally looked after by the rural district councils. Like the county council, a district council maintains a permanent staff of its own It may be stated that elections to the rural district council are held in April. Councillors are elected for a three year term, one third of them retire every year, thus necessitating annual elections of one third of the total strength of a district council.

The Urban District Council.— When any part of a county becomes thickly populated on account of the development of industry, the county council may organise it into an urban district and give it an elected council to make provision for its water

supply, sanitation, public health and other matters like gas, electricity or tramways If an urban district has a population of over 20,000, its council is given the power to control its elementary schools If the population exceeds 25,000 a stipendary magistrate may be appointed The powers of the urban district council continue to grow until they come close to those of a borough council There are about 700 urban district councils in England and Wales

District councils, rural as well as urban, elect their own chairmen from among their own members or outsiders They meet once a month and like the county councils, carry on their work with the help of committees and permanent staff Every council appoints its own health officer, sanitary inspectors, a surveyor, a clerk, a treasurer, a tax collector and other officials

The Parish.— The parish is the smallest unit of local government for rural areas It can have a council only if the population is three hundred or more. It contains from five to fifteen members generally elected at a primary meeting by a show of hands, and lasts for three years The affairs of a parish with less than 300 souls are managed by the parish meeting to which all ratepayers are invited The duties of the parish meeting and the parish council are slight. They usually consist of looking after the Parish Hall and Library, the village green, and protection of the local rights of way. They are sometimes asked to take care of the water supply and the repairing of foot paths Sometimes there is a difficulty in finding suitable men to serve on the parish council ; in such a case a person from another parish may be elected to the parish council The council cannot have any paid officer other than the clerk

The Borough.— For purposes of local government boroughs possess a far greater importance than the rural or urban districts and the parishes ; a very large proportion of the population lives

in them England and Wales have become highly urbanised during the last century and a half The problem of municipal government is more important in England than in India where about 75 % of the population live in villages

Three kinds of boroughs are generally recognised— parliamentary, municipal and county Parliamentary boroughs are areas or units for the election of members to the House of Commons, they have no concern with local government, no more than the historical counties Municipal and county boroughs do not differ in any fundamental way in respect of structure or functions, they are constituted on similar lines and enjoy similar powers The difference between them lies in the fact that a municipal borough is a part of the administrative county in which it lies and is subject to its jurisdiction, while a county borough is given the powers of a county and is therefore exempt from the control of the county within which it is situated As soon as any borough acquires a population of 75,000 it may apply to the Ministry of Health for being accorded the status of a county borough Of course, it is not necessary that it must do so; not all the boroughs apply for the status.

A borough (municipal or county) is an urban area which has received a municipal charter and is organised and governed under the provisions of the Municipal Corporations Consolidation Act of 1882 and its amendments. The process of obtaining a municipal charter is lengthy. The petition is addressed to the King, goes to the Privy Council which institutes an inquiry, and reports If its findings are favourable, and no objections are raised either by a local authority or by a number of qualified voters of the area, an order in council is issued granting the charter and fixing the boundaries of the new borough. Boroughs differ in size and in the powers they enjoy. They derive their powers from many sources— from the Municipal Corporation Act, local and private Acts of Parliament, and from orders of certain departments of the central

government authorised to do so This diversity of sources causes variations in the powers of the boroughs

The governing authority in a borough is the borough council composed of a mayor, councillors and aldermen The size of the council is fixed by the charter on the basis of population, the lowest number being 6 and the highest 42 The councillors are elected by popular vote for a three-year term, one third retiring every year, and the aldermen are chosen by the councillors from their own ranks or from outside for a period of six years. The aldermen constitute one third of the number of councillors, and half of them retire every three years Councillors and aldermen have the same powers and functions, the latter enjoy a little more prestige than the former on account of their longer term and greater experience and provide the council with a steadying influence For election purposes the borough is divided into a number of wards, each returning three or a multiple of three councillors Elections are held every year on the 1st of November

The councillors and the aldermen choose a mayor from among themselves or from outside The mayor's office is one of great dignity and antiquity, its occupant is the first citizen of the borough and represents it on all important ceremonies He holds office for a single year but may be re-elected He presides over the council meetings and can participate in voting on all questions. He has however no executive authority He makes no appointments and the council's resolutions do not require his approval. The office is not stipendary, though many boroughs avail themselves of their legal power to pay a salary because the social duties of the office entail much expense The mayor's wife has no legal duties but is expected to take part in social activities If the mayor has no wife, some lady relation of his does duty as mayoress, and if a woman is elected as a mayor, another woman will act as mayoress.

The borough council combines in itself executive and legislative functions It appoints all officials and supervises the work of the various departments looking after water supply, sanitation, public health, education, streets and roads, police and fire protection It exercises all the powers coming to the borough from the common law, general and special Acts of Parliament, and from the provisional orders issued by the central government departments Much of the work is done through committees Law requires every borough council to have committees on finance, education, poor relief, old age pensions, fire protection, and a watch committee having to do with police Sometimes the number of committees rises to 25 or even 30 The council itself meets in the town hall monthly, or fortnightly and even weekly if business requires, and carries on its work under rules framed by itself The legislative function of the council consists of the making of bye-laws relating to all sorts of matters, subject to the authority of the Ministry of Health to disallow any rule made by it if it is found contradictory to a national law The council is also responsible for the preparation of the budget, makes all appropriations and levies rates and taxes to meet the expenditure and borrows money in so far as the Treasury authorities at London permit The clerk, the treasurer, the engineer, the public analyst, the chief constable, and the medical officer are among the permanent salaried officers appointed by the council for carrying on the work of borough government with the help of subordinate staff As stated above it is one of the tasks of the council to supervise their work

As in the counties, so in the boroughs, all administrative appointments are made by the council on merit No competitive tests are held, but enough care is taken to see that only fit and suitable candidates are taken Though the council can dismiss its employees at any time, practically they have security of tenure provided their work is satisfactory Security rests on tradition and not upon law The fact that political and personal considerations

do not usually enter in the making of appointments coupled with the security of tenure makes municipal administration very efficient

Central Control over Local Government — From the foregoing account of local government it would be clear that the Britishers enjoy a large measure of freedom in the management of their local affairs Whether it is a county, a borough, an urban or a rural district, or a parish, the area has a popularly constituted council in which the authority to manage local affairs is vested The council elects its own chairman, appoints its own staff, raises funds by taxation within authorised limits, and spends it on approved items It initiates and carries out its own policies In other words, the Britishers have local *self* government, they enjoy municipal home rule Local bodies are not a mere subordinate part of the governmental machinery, they may be said to have wills of their own, and to exist in their own rights They form as it were a detached system.

This, however, should not be taken to mean that they are allowed to go their way without any control or interference from the central government at London There has always been a certain amount of control from above, but it was not much in the pre-reform days About a century ago the central government did not concern itself much with purely local affairs The counties and the boroughs taxed, spent, built roads and did other things as they liked without much central interference But this is no longer the case to-day. Central control has increased considerably and tends to increase, though it is not so great as in France and other countries of Continental Europe, and in India

Central government exercises control over local bodies in several ways Parliament passes laws creating new and abolishing old areas of local government and providing that local authorities may do certain things with the approval of the appropriate department of the Government at London The laws made by Parliament may even lay down rules and regulations for the

guidance of local authorities As society becomes more complex and interdependent and conceptions of the scope of governmental activity broaden, local bodies are asked to take up one new activity after another This invites greater central control to secure uniformity. But what gives to the national authorities a great amount of control and power of interference is the system of grants in-aid from the central funds This is the main channel through which central control of local government has been expanding in England The government offers subsidies to local bodies in aid of education, police, health, and other services, and then claims the right to inspect whether the sums granted by it are being spent to the best advantage or not. Government inspectors follow in the wake of government grants; they come not only to see and hear on behalf of the national government but also to speak and act for it If they find that the work of a local body is not upto the mark or that it does not observe all the rules and regulations made by the government, they report to the national authorities who threaten to stop the grant-in-aid if conditions do not improve The central government thus exerts constant pressure through its inspectors It is in a position to check extravagance as well as to punish slackness The government can also secure the handing over of the powers of a local authority to Commissioners appointed for the purpose by the ministry of health if an authority persistently defaults in the performance o its duties

It may be pointed out that prior to the Local Government Act of 1929 the central government used to give separate grants in aid for the different services, one definite sum for education, another for housing, and another for police, and so on If the grant for one specific purpose was not properly utilised, it alone could be curtailed or withheld, the other grants were not affected But the Act abolished separate grants and provided that a large sum may be advanced which may be expended in any manner as the body may like This arrangement makes it possible for the

government to withhold the entire grant or a portion of it if they feel dissatisfied with any branch of local administration It would thus appear that it is mainly through the medium of finance that the central government controls the administration of local affairs The control is more administrative than legislative The British Parliament does not seek to control local administration by legislative measures, it authorises some department of the central government to determine whether a local body may do one thing or another and then sees that the work is being efficiently done. It should not be forgotten that Parliament passes laws prescribing what the areas of local government shall be and what kind of government they shall have, it also determines what activities they shall undertake and what not So far the control is legislative. It however does not go far enough and does not affect the character of administration Through grants in aid and the power of inspection and advice the different departments exercise administrative control In this respect the British method differs from the American.

Another point to be borne in mind in this connection is that central control is exercised through several departments and not through one as is the case in France where it is much greater The ministry of health, the home office, the board of education, the ministry of transport, the board of trade, and the ministry of agriculture are the chief departments with which local administration comes into intimate contact and which exercise supervision over it The ministry of health has general control over poor relief, water supply, sanitation, and public health The home office supervises police and is responsible for the inspection of factories and mines The board of education looks after elementary, secondary, technical and collegiate schools The ministry of transport has jurisdiction over tramways, street railways, ferries, docks and harbours The ministry of agriculture supervises the enforcement of laws relating to markets, food and drugs, diseases of animals, and other matters The departments

do not drive the machinery of local government (except for the management of London police by the Home department), it is driven in each area by the council and the permanent staff it has appointed. The function of the national departments is only to supervise and to give information and advice. They also hear complaints, make investigations and settle disputes. They lay down rules and regulations as to organisation and procedure and other matters which the local authorities are bound to follow. They may assent to the doing of one thing and disallow the doing of another. They may do all this and more, but still it is not their business to undertake the performance of any work falling within the scope of local authorities. They simply see that the latter do their work properly.

The British plan has many good features. It combines the advantages of local autonomy with strong central control. Local self-government is of very ancient origin; the Anglo-Saxons gave to England her system of local government and the habit of local autonomy which survives till this day. Central control is a phenomenon of the recent past and has come about gradually and slowly without any definite plan or theory. It developed in response to the needs of the situation, and has resulted in much good. It has brought about much needed uniformity, order and efficiency without doing injury to the freedom of the people to manage their local affairs. Central control is not rigid and allows considerable latitude to local authorities to deal with their individual problems. Nevertheless, there are critics who apprehend danger to the future of local self government from increasing central control. Some also 'wonder whether county, and specially borough Government will not eventually break down or at all events lose much of its present efficiency, under the steadily growing burden of duties and responsibilities devolving upon it'.* In view of the elasticity of central control and the love of local autonomy ingrained in British character such dire

* Ogg, *European Governments and Politics*, page 367

consequences are not likely to follow, we may easily dismiss the apprehension There is however much scope for reform in the machinery of self-government on its structural side There seem to be too many areas of local government with overlapping jurisdiction Something can be said for the principle of one primary local government for a given area

Government of London — London has a system of local government different from that prevailing in other English municipal cities and boroughs In this respect it does not differ from most of the great capitals of the world like Paris, Berlin, Rome, Tokyo and Washington From a very early period London has been treated as quite apart from other parts of the country Parliament has often legislated for London alone The Municipal Corporations Act of 1835 which provides the basis of the modern municipal government in Great Britain left London untouched Parliament had to pass special legislation to meet th requirements of the capital in 1855, and again in 1899 It has its own Public Health Act, Education Act, Building Act etc

For purposes of local government London has been divided into three distinct parts or areas, each with its own governing organs They are *(i)* the City of London *(ii)* the County of London, and *(iii)* the London Metropolitan District What is technically known as the City of London is a very small part of the modern capital and constitutes its historic core It has an area *of about one square mile (while the Greater London covers about* 700 sq mls) and preserves its old boundaries, street names and forms of government It has almost ceased to be a residential region and has become the business and financial centre of the metropolis Its resident population consisting mostly of watchmen etc , amounts to 14,000 It is governed by a Lord Mayor and three councils, the Court of Aldermen, the Court of Common Council, and the Court of Common Hall The Court of Aldermen consists of the Lord Mayor and 26 aldermen elected for life

Nowhere else are aldermen chosen for life The Court of Aldermen has insignificant powers, it licenses brokers and keeps city records. The Court of Common Hall is composed of the members of the Court of Aldermen and the Liverymen of the City Companies. These companies are the descendents of the medieval Guilds of Craftsmen and Merchants The Court elects the Sheriff every year, and selects two aldermen from whom the Court of Aldermen will finally choose the Lord Mayor Its powers are also unimportant *The Court of the Common Council is the real governing authority* of the City It consists of 200 annually elected councillors and 26 aldermen of the Court of Aldermen It makes bye laws for the City, looks after the bridges in the City, owns and manages much property and performs all other functions except fire protection, water supply, poor relief, public health, street railways and main drainage It has its own police force, civil courts and criminal courts of summary jurisdiction It has committees to look after and supervise the various services it performs.

The County of London is an administrative county. Its boundaries were drawn by the County Councils Act of 1855 which also provided it with an elected council. In 1898 there were created within the County of London 28 Metropolitan Boroughs having subordinate powers The London County Council as its governing authority It consists of 124 elected councillors and 20 aldermen chosen by the former from among themselves or from outside The councillors are elected for three years and the aldermen are chosen for six years. Half of the aldermen retire every three years The councillors and the aldermen together elect a chairman He may be chosen from outside. Since 1935 the chairman, like the Lord Mayor, bears the title Right Honourable The powers of the L. C. C. are in some respects like those of county councils elsewhere, and in some respects less, because in the capital the Central Government judges it best to perform certain functions itself, *e. g.*, the police functions. The council has 18 standing committees and one

executive committee consisting of the chairmen of the 18 standing committees The Council is one of the most vigorous and industrious in the country and has many notable achievements in education, public works, sanitation etc , to its credit It administers an area of 117 sq miles containing about 40 lakh persons It is the sole authority in respect of main sewerage and sewerage disposals, and has charge of roads of metropolitan character, tunnels, ferries, bridges, fire protection, sanitation, public health, housing, education, recreation grounds and public fairs It operates tramways and maintains a fleet of passage boats on the Thames Water supply is managed by a separate Metropolitan Water Board The Council has an annual income of £ 40,000,000

Each of the 28 Metropolitan Boroughs created by the Act of 1898 has a local governing authority consisting of a mayor, elected councillors and aldermen The powers of these councils are narrower than those of other borough councils They construct main highways, attend to street building, paving, lighting and cleaning of streets, and also enforce the Public Health Act They also have charge of public baths, washing houses, public libraries, local cemeteries and workmen's dwellings They supplement the work of the L C C by providing parks and recreation grounds. The Metropolitan Borough Councils may be said to be local government within local government

The British and the Indian systems of Local Government compared — It would not be improper to conclude this chapter (and the book also) with a comparison between the British and the Indian schemes of local self government Like many other political institutions established by the British government in our country our local bodies are modelled on the British pattern In their composition and functions they thus show many similariti to the county and borough councils in England. Like the latte they are at the present time popularly elected, though on th basis of separate communal electorates and on a much narrowe

franchise It may even be maintained that they are expected to render the same type of service to the persons residing within their jurisdiction as the British local bodies do It must, however, be admitted that they have not been able to reach the same standard of efficiency as attained in Great Britain Our municipal and district boards are very much behind the English county and borough councils in their social work It should interest the reader to know the type of work that is being done by the latter so that he may realise how far short our local bodies fall in the discharge of their duties

The social activities of the local bodies in England may be grouped under the following heads public health, education; housing, planning and public assistance Public health activities may be further subdivided into (*i*) general measures to prevent disease and promote health, (*ii*) the treatment of the sick, and (*iii*) the care of mothers and children Under (*i*) might be included provision for the adequate supply of water for every house and school, the control over wells and other small natural supplies of water, prevention of contamination of drinking water, removal of refuse collected in dust bins, and the effort to see that no building is erected in places rendered unhealthy by being near to sewerage canals etc In bigger towns the councils frequently establish baths and public laundries Health authorities appoint sanitary inspectors to visit shops and see that impure food is not served or sold to the people Our municipal boards do generally undertake such like activities though not to the same degree, but not so the district boards to any appreciable extent The villages served by them are usually dirty and have no proper drainage system

The arrangements made by the local authorities in England for the treatment of the sick are far superior to those existing in our country. There the more dangerous infectious diseases like diphtheria, scarlet fever, typhus and small pox are 'notifiable'; the person in whose house they occur must inform the Medical Officer of Health who has to make arrangements for the removal

of the patient to an isolation hospital, disinfect the house and take other steps to prevent the disease from spreading further. This service is run in co operation with voluntary hospitals The municipal boards in our country do not take steps to isolate persons suffering from infectious diseases We are also far behind the British people in providing for maternity and child welfare An Act passed by the British Parliament in 1936 makes local authorities in charge of education also responsible for maternity and child welfare At places they have built clinics and maternity homes of their own with the result that infantile mortality has greatly decreased in England A very large number of mothers with young children attend welfare centres

Elementary education is free and compulsory in Great Britain Local authorities are bound to provide education for children from five to fourteen years of age, and appoint Attendance Officers to see that all parents send their children to school Special schools exist for physically and mentally defective children In our country such schools are few and far between, and free and compulsory primary education exists at very few places Our local bodies have not paid sufficient attention to this problem.

The Britishers have realised that bad houses cause ill health like bad food The Act of 1936 summarises the provisions of earlier Acts in regard to the inspection of houses to see that they are fit to live in Persons are not allowed to live in unhealthy dwellings which have either to be improved or are destroyed The Medical Officer of Health has also to pay attention to slums Efforts are being made to improve the existing slums and prevent the construction of new ones. To provide for the habitation of those who are made to vacate dwellings declared unfit for human use and also for meeting th needs of a growing population many local authorities have built new houses Since the first World War over three million houses have been built and one third of the population has bee

rehoused The record of Indian municipal boards is very meagre in this respect

Planning does not seem to exist in our country except where Improvement Trusts exist and function in a proper way. In England, Parliament passed a Town and Country Planning Act in 1932 under which local bodies may take steps to preserve the health and beauty of the land and prepare schemes for building new houses etc Under Public Assistance it becomes the duty of local authorities to make provision for the aged, the infirm and the unemployed under other groups. Our municipalities and district boards do not think it to be a part of their duty to help the poor, the needy and the infirm

Another important difference between the functions of local bodies in the two countries is to be found in the fact that in England they are entrusted with the duty of policing the district Every county has its own police force which performs all the police duties within the area. The county police is annually inspected by the Home Office, and if the results are satisfactory, half the cost of its maintenance is met by the central government. In our country the district and municipal boards perform no similar function; the law does not empower them to do so. It would thus appear that though constituted in a similar way, the agencies of local self-government in the two countries show important differences in their working * It may also be pointed out that here in India the degree of central (provincial) control over local bodies is much greater than in England and is exercised in a more direct manner We have no bodies parallel to the parish and the urban and rural district councils in our districts. Village panchayats, if and when constituted on a popular basis, would correspond to parish councils Some provincial governments are contemplating steps in this direction

* To a certain extent this is due to the fact that the scheme in India is not even a century old and has not taken deep roots in the soil.

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